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CURRENT EVENTS.

REGISTRATION OF DEEDS—UNIFORMITY OF STATUTES.—Variety is proverbially the "spice of life," but in some respects the legal fraternity finds its flavor a trifle too pungent. The great diversity in the statutory provisions in the several States on many important subjects is a source of uncertainty, labor and anxiety to practitioners whose duty it is to deal with those statutes. Among the subjects regulated by diverse statutes in the several States are commercial paper, marriage, divorce and the registration or recording of deeds and other muniments of title. We now propose to consider only the last of these subjects, and it will be found that the statutes of no one State are in full accord with the statutes of any other State, and as each statute of each State has been profusely construed and reconstrued, expounded and differentiated in numerous adjudged cases, it is manifestly a task of no small labor and difficulty for a lawyer in one State to ascertain the true construction and precise application of a statute of another State. The occasions for this labor are very frequent, as there is now so much intercommunication of the people of the States that State lines have become in effect imaginary lines, and diversity of statute law is a snare for the unwary.

The difficulties on this subject are intensified by the fact that the authentication and recording of deeds is a matter of strictly statutory regulation, that no aid can be derived nor any general rule formulated from the common law of England, and that each State has unquestionable and exclusive jurisdiction of the authentication of all instruments affecting real estate within its borders. The federal government is utterly powerless to remedy even the slightest of the evils growing out of the diversity of the statutes under consideration. The question remains, what can be done to cure so great an evil so clearly apparent to all who have given a moment's thought to the subject?

Three courses have been suggested, one in mitigation, the other two remedial. The first is to furnish the profession with a text-book or compilation of all the statutes of each of the States, and every ruling thereon of its court of the last resort, which affects the execution or authentication of deeds or other instruments relating to lands, and the recording of such papers, and the effect of the notice given thereby to parties, privies, third persons and "all the world." Such a work would, if in general use, for a time mitigate the evil, but with thirty-eight or forty legislatures annually or biennially grinding out new statutes, and as many supreme courts constantly promulgating new constructions, it would, in a few years, need a supplement.

We think this is the only measure attainable for the mitigation of the evils growing out of the diversity of State statutes relating to registration of deeds, and the numerous and contradictory decisions on the subject. Both of the alternatives suggested we regard as impracticable. One is, that under the auspices of the bar associations, State and national, the several State legislatures should be induced to adopt with one accord an uniform system of procedure for the authentication and registration of deeds. With the highest respect for bar associations, and a full appreciation of the influence of the profession upon legislation, we must be permitted to express the opinion that the proposed achievement is *ultra vires* of bar associations. The fatal obstacle to the desired improvement may be expressed in the old copy-book line, "many men of many minds." There are too many legislatures and too many legislators, such as they are, to be operated on in favor of the movement, and we think that the *vis inertiæ* of indifference, would for a long time resist the utmost pressure that could be exerted by the combined bar of the United States, in favor of this and other like reforms. There is, however, no harm in trying, and we wish the fullest success to all efforts to secure uniform legislation on important subjects in all the States.

The other alternative is to invoke federal interference, and we think that congress could not act in the matter except after the adoption of a constitutional amendment authorizing such action. Pretermitting that point, however, we may safely say that the

advocates of any measure tending to vest in congress jurisdiction over subjects heretofore within the exclusive control of the States, would encounter not merely indifference, but the opposition of the very lively ghost of State rights which has of late manifested such remarkable evidences of vitality. We think that congress could not exercise, nor could it be authorized by constitutional amendment to exercise any jurisdiction over the law of marriage, or of divorce, or of negotiable paper, or of the transfer or recording of land titles, without such vehement opposition as would probably prove successful.

Uniformity in the statutes of the several States which control the authentication and recording of deeds will hardly be attained within that very indefinite period known to the law as "a reasonable time," and we think it is a pity for all concerned that such is the case. The object of all the statutes being the same, the variations in the prescribed procedure are all apparently, and some of them really trivial, and yet the courts in many instances have held departures from established formulæ to be fatal to the validity of the acknowledgment or registration of deeds.

Upon one point, we think, uniformity in the statutes controlling this subject is especially desirable, and that is the time when the recording or registration of a deed shall be held to be complete, and constitute notice to all the world of the contents and purport of the deed. In many of the States the rule is, that for such purposes the registration is complete on the day, hour and minute when the deed is filed for record, passes into the hands of the officer of the law, and is thence forward open to the inspection of those who are charged with notice of its contents. This is the only fair and reasonable rule, as it charges nobody with notice of anything that could not have been ascertained by the use of due diligence.

No human institution is absolutely perfect. There is always a flaw somewhere. *Surgit amari aliquid*, the bitter will rise to the lips. In our carefully adjusted delimitation of the powers respectively of the State and federal governments, the weak spot, the bitter pill, is to be found in the growing diversity of State statutes controlling subjects exclusively within State jurisdiction. These subjects include the great body of the law; the evil increases by the multiplication of States, and is intensified by the enormous intercommunication of the citizens of the several States.

We think we must accept this as the penalty which we are obliged to pay for the complexity of our legal and political institutions. We may mitigate the evil, but we cannot remedy it without hazard of creating greater evils.

NOTES OF RECENT DECISIONS.

FRAUDULENT CONVEYANCES–CREDITOR–ORAL GIFT OF LAND TO SON—VALUABLE IMPROVEMENTS.—The Supreme Court of Missouri recently decided a case[1] involving the validity of an oral gift of land by a father to his son, upon which the latter had made valuable and lasting improvements. The facts were, that the father in this case in 1869, being then solvent, gave to his son the tract of land in question, but afterwards became insolvent and his creditors sought to subject the land to the payment of his debts, upon the ground that the gift was fraudulent as to them. The son, upon receiving the gift, had made valuable and lasting improvements upon the property. The court held that the improvement made by the son in good faith constituted a sufficient ground to support an action on his part for a specific performance by compelling a suitable conveyance of the land.[2]

The court also supports this ruling upon the ground that the making of the improvements is a part performance of the contract between the father and the son.

The court adds: "I think that the equity of the defendant may well be planted exclusively on the oral gift of 1869, followed as it has been by the son making such valuable and lasting improvements as the evidence shows he has made upon the premises in controversy, and evidently upon the faith of the

[1] Dozier v. Matson, S. C. Mo., March 5, 1888; 25 Reporter; 7 S. W. Rep. 268.

[2] Waterman on Spec. Perf. § 187; Hardesty v. Richardson, 44 Md. 617, and cases cited; Freeman v. Freeman, 43 N. Y. 34; Kurtz v. Hibner, 55 Ill. 514; Neale v. Neales, 9 Wall. 1. The same doctrine is recognized in Rumbolds v. Parr, 51 Mo. 592, and in the earlier case of Halsa v. Halsa, 8 *Ib.* 303.

consummation of the oral gift. In one of the cases cited above, it was ruled that in order to obtain the relief sought it was not necessary to allege or to prove that improvements of a valuable and lasting character were made on the land upon an agreement or understanding that the land was to be thus improved as a condition of receiving a conveyance therefor; that it was sufficient that such improvements were made by the son, with the knowledge of the father, and were induced by his promise to convey the land.[3] Owing to the father not being in embarrassed circumstances when he made the oral gift of the farm to his son in 1869, and to his being in a solvent condition in 1871, when he wrote the letter in question, it is wholly unnecessary to go into any discussion of his financial condition when he made the deed in 1877, now sought to be canceled. The equities of the son at that time rested upon too firm a basis to be overturned by the subsequent and sudden financial reverses of the father. All that the father retained at the time he made the deed was the bare legal shell, worthless to creditors, and only beneficial to him who in equity was entitled to demand that that be done, which the father of his own heed did voluntarily. A view similar to the one here taken was held by this court in Payne v. Twyman,[4] in which it was ruled that where a husband had entered land in his own name with money belonging to the separate estate of the wife, and subsequently, when in embarrassed circumstances, conveyed the land to a trustee for her benefit, that this furnished no ground for complaint on the part of his creditors, since he had only done what equity would have compelled him to do."

[3] Hardesty v. Richardson, *supra*.
[4] 68 Mo. 339.

EFFECT OF ADMISSIONS BY PARTNERS.

I. AS PROOF OF THE PARTNERSHIP RELATION.

1. *In General.*—It is a well settled principle of partnership law, that the separate admission of each member of an alleged firm is competent evidence against him, but not against the other supposed members to prove the partnership.[1] Thus, where three are sued as partners and one of them pleads, the plaintiff cannot give in evidence the declarations of the others to prove the partnership.[2] Such declarations are not admissible, except as against the party making them,[3] until independent proof of the partnership has been given.[4] But the successive acts and declarations of each of several defendants, showing their partnership, are equivalent to a joint declaration to that effect by all, and may be given in evidence.[5]

Where the question which the jury are to decide is whether the defendant is a member of a certain partnership, it is proper for the court to exclude the declarations of the defendant not made in the presence of the plaintiffs or their agent.[6] But where the pleadings show that the several defendants were jointly employed by the plaintiff, the admission of one of the defendants is compe-

[1] Currier v. Silloway, 1 Allen (Mass.), 19; Gordon v Bankard, 37 Ill. 147; Drennen v. House, 41 Pa. St. 30; King v. Barbour, 70 Ind. 35. See also Filley v. McHenry, 71 Mo. 417; Brown v. Rains, 53 Iowa, 81; Fick v. Mulholland, 48 Wis. 413; Flourney v. Williams, 68 Ga. 707.

[2] Nelson v. Lloyd, 9 Watts (Pa.), 22; Sherman v. Kelton, 2 R. I. 532.

[3] McPherson v. Rathbone, 7 Wend. (N. Y.) 216; Yancey v. Mariott, 1 Sneed (Tenn.), 28

[4] Cross v. Langley, 50 Ala. 8; Converse v. Shambaugh, 4 Neb. 376. But such declarations, if made at the time the debt of plaintiff was contracted, are admissible to prove that plaintiff relied on the existence of the alleged partnership: Greenwood v. Sias, 21 Hun (N. Y.), 391.

[5] Haughey v. Strickler, 2 Watts & S. (Pa.) 411; Welsh v. Speakman, 8 Watts & S. (Pa.) 257.

[6] Teller v. Patten, 20 How. (U. S.) 125.

tent to charge the others as his copartners; and in such a case objection to such evidence on the ground of want of previous proof of partnership is removed by subsequent testimony tending to prove that fact.[7]

2. *What Admission are Admissible and Sufficient to Prove Partnership.*—Upon the question what amounts to such an admission of the existence of a partnership as to be admissible, it has been held that if defendants, sued as copartners, introduce in evidence a receipt taken by them in their copartnership name, of the plaintiffs, this is an admission of the copartnership.[8] And where the action is on an account stated, evidence that defendants admitted that they were partners should be allowed to go to the jury, even though not specifically confined to the time within which the account accrued.[9]

The admission may be positive assertion, or may be inferred from the silence of the party when addressed as a partner in the firm sought to be charged.[10] Thus, where A told B that he was in partnership with C, and B so imformed C, who did not reply, it was held that this was sufficient proof of a partnership between A and C.[11] The same was held in the case of frequent admissions, in conversations, of the existence of a copartnership, supported by entries in books kept by the parties;[12] and in the case of the admissions of a party that "he was one of the proprietors of the firm of Adams & Co.'s Express," and that the signature of a receipt was that of one of their clerks.[13]

3. *What Admission are Insufficient to Prove or to Disprove Partnership.*—On the other hand, it has been decided that an inventory filed by one partner after the death of the other, which imports to contain the assets of the firm, is no more than an implied admission of the partnership made after its dissolution. Such inventory is not evidence either to prove the partnership as against the decedent, or to bind the partnership creditors as against the individual creditors of the decedent.[14] So, also, under the plea of *non est factum*, involving the existence of a partnership, the declaration of the defendant to third persons, before the execution of the instrument in question, that no partnership existed, is not evidence. What the defendant said when the note was offered to him for payment would be evidence, such declaration being a part of the *res gestæ*.[15]

Where A and B were sued as partners and A was defaulted, B pleading the general issue, letters written by A in the firm name were not allowed to be read in evidence by B, to show that he was not a partner with A, but letters of the plaintiff were admitted as evidence to show that he did not consider B as such partner.[16]

So, also, where two persons purchased a mill and house, which they commenced to remove, but, before the removal was completed, one of them died; the general declaration of the deceased that the two had bought a mill in partnership, no terms of partnership being stated, were held not sufficient evidence of a partnership, as such declarations might well consist with the existence of no more than a tenancy in common.[17]

4. *General Rule as to "Holding Out"*—The rule is well settled by numerous adjudications, that one who holds himself out to the world as a partner, and thereby obtains credit himself, or gives credit to the firm, will be held responsible as such, though in fact he is not a partner.[18] If credit be given on the strength of the holding out, the party is bound on the principle of estoppel.[19] Thus, in a suit against the firm the jury are not required to decide whether the partnership

[7] Fogerty v. Jordan, 2 Robt. (N. Y.) 319.
[8] McFarland v. Lewis, 2 Scam. (Ill.) 344.
[9] Sager v. Tupper, 38 Mich. 258.
[10] Humes v. O'Bryan, 74 Ala. 64.
[11] Slade v. Paschal, 67 Ga. 541.
[12] Wallace v. Berger, 14 Iowa, 183.
[13] Fenn v. Timpson, 4 E. D. Smith (N. Y.), 276. See, also, for instances of admissions deemed sufficiently broad to prove partnership, Anderson v. Snow, 9 Ala. 247; Drumright v. Philpot, 16 Ga. 424; Vance v. Funk, 2 Scam. (Ill.) 263; Cleghorn v. Johnson, 11 Iowa, 292; Palmer v. Pinkham, 33 Me. 32; Whitney v. Sterling, 14 Johns. (N. Y.) 215; Thomas v. Wolcott, 4 McLean (U. S.), 385; Bisel v. Hobbs, 6 Blackf. (Ind.) 479; Woods v. Quarles, 10 Mo. 170.
[14] Bond v. Nave, 62 Ind. 506.
[15] England v. Burt, 4 Humph. (Tenn.) 399.
[16] Champlin v. Tilley, 3 Day (Conn.), 303. See also Nichols v. White, 85 N. Y. 551; Porter v. Wilson, 13 Pa. St. 641.
[17] Gregory v. Martin, 78 Ill. 38.
[18] Benedict v. Davis, 2 McLean (U. S.), 347; Buckingham v. Burgess, 3 McLean (U. S.), 364, 549; Campbell v. Hastings, 29 Ark. 512; Carmichael v. Grier, 55 Ga. 116; Daily v. Coons, 64 Ind. 545; Hancock v. Hintrager, 60 Iowa, 374; Woodward v. Clark, 30 Kan. 78; Rice v. Barrett, 116 Mass. 312.
[19] Cirkel v. Ellis, 31 N. W. Rep. 513.

actually existed, but only whether it was held out to the plaintiffs as existing.[20] And the principle is the same whether the holding out be as to a single enterprise or the assertion of a general partnership.[21] So, where an obligation, signed by two persons with defendant, is, on his representation that he is a member of a partnership, exchanged for another signed by the latter alone, he cannot, in an action by the holder, deny that he is a partner.[22] Notwithstanding the fact that the person held out as a partner or dormant partner has not signed the articles of partnership, he may be sued and held jointly with those who did sign them.[23] And the fact that a number of persons held themselves out as partners, will, *prima facie*, establish a partnership in an action by them against third persons, or by one standing in the same position.[24]

5. *The Holding Out Must be Relied Upon.*—The principle upon which a liability as a partner is fastened upon one who is in fact not a partner, being analogous to that of an estoppel *in pais*, it follows that where one is not misled to his prejudice, either positively or tacitly, by the party whom he seeks to hold liable, there can be no such estoppel.[25] The mere act of holding out does not make the party held out, in fact, a partner, nor render him liable as such, except as to those who are thereby led to believe he is a partner, and who give credit to the supposed firm upon such belief.[26] If the creditor be ignorant of the holding out, the principle of estoppel does not apply, and the party held out is not a partner as respects such creditor.[27]

6. *What Constitutes a Holding Out.*—The person sought to be charged as a partner, on this ground of estoppel, must be shown to have done something calculated to create a belief that he was a partner and to have misled the plaintiff.[28] This "holding out" may be by words spoken or written, or by conduct leading to the belief that a partnership exists.[29] Thus, one who "represents himself as a partner," or permits others to do so,[30] or who so conducts himself in buying goods as to induce the belief that he is a member of the firm he buys for,[31] or who knowingly permits his name to be used as a member of the firm,[32] thereby incurs a partner's liability as toward those who are misled thereby.

So, also, the appearance by an individual, in an action against a partnership, who files a plea to the merits, takes an active part in the proceedings, and takes an appeal, is a conclusive admission that he is a member of the firm.[33] And the act of a father in placing his infant son in a firm as a partner, has been held to be such a taking part in the business on the part of the father as to make him liable to creditors as a partner in the firm.[34]

On the other hand, it has been held that entries in the books of a firm are not evidence against any one to show that he is a member of the firm;[35] and that a general manager of a firm who, duly authorized, uses the firm name in transacting its business, and signs it to be a contract which he has personally concluded, is not liable as a partner, unless he has affirmatively held himself out as such.[36] So, also, a statement in a newspaper, to the effect that a certain person is a member of a certain firm, which does not purport to be inserted by the firm, is not admissible to charge the person referred to as a partner, merely on proof that he was a subscriber to the paper at that time, and never requested the editor to deny such statement.[37] And evidence that A was a partner in a certain company in September, and as such signed contracts reciting a contract made by the

[20] Young v. Smith, 25 Mo. 341; Shackleford v. Smith, *Id.* 348; Stephenson v. Cornell, 10 Ind. 475.

[21] Shafer v. Randolph, 99 Pa. St. 250.

[22] Burbank v. Haas, 9 La. Ann. 528. In Tans v. Hinter, 9 Pa. St. 441, two out of three partners gave a note in the name of the two as a distinct firm, but the three, in the course of their business, induced the belief that such was their firm name: *Held*, that all three were liable as partners on the note.

[23] Wood v. Cullen, 13 Minn. 394.

[24] McCarthy v. Nash, 14 Minn. 127.

[25] Marble v. Lypes, 2 South. Rep. 701.

[26] Wood v. Pennell, 51 Me. 52.

[27] Thompson v. First Nat. Bank, 111 U. S. 529; Fitch v. Harrington, 13 Gray (Mass.), 468; Benedict v. Davis, McLean (U. S.), 347.

[28] Pringle v. Leverich, 48 N. Y. Super. Ct. 90.

[29] Cirkel v. Ellis, 31 N. W. Rep. 513; Harris v. Sessler, 3 S. W. Rep. 316.

[30] Daily v. Coons, 64 Ind. 545; Rice v. Barrett, 116 Mass. 312.

[31] Hancock v. Hintrager, 60 Iowa, 374.

[32] Campbell v. Hastings, 29 Ark. 512; Carmichael v. Grier, 55 Ga. 116.

[33] McCaskey v. Pollock, 2 South. Rep. 674.

[34] Miles v. Wann, 27 Minn. 56.

[35] Abbott v. Pearson, 130 Mass. 191.

[36] Thursen v. Lathrop, 104 Pa. St. 365.

[37] Potter v. Greene, 9 Gray (Mass.), 309.

company in March, is not competent in order to charge him upon a debt contracted by the company in July.[38]

7. *Defendant Held Out by Others.*—When one person permits another to hold him out as a partner, and thereby procures credit on the strength of his supposed relation, neither community of interest nor participation in the profits is necessary to render him liable as a partner. But in order to render a person liable on this ground, he must have had knowledge that he was held out, or there must be circumstances from which notice can be imputed to him.[39] In other words, one person cannot give himself credit as a partner of another by holding himself out as such, without the consent, express or implied, of such other person,[40] and a person falsely held out as a partner without his knowledge is not required to use diligence in ascertaining and contradicting the report.[41] But where two persons authorize a third to represent and hold himself out as their partner, and in pursuance thereof he does so, this is as much their holding themselves out as if the representations had been made by them in person.[42]

8. *Holding Out by Surviving Partner.*—Where a firm is dissolved by the death or retirement of one of the partners, it has been held that the evidence to support its continued existence as a universal partnership, alleged by a surviving partner, must be very clear.[43] Surviving members of the firm who, after its dissolution, do not give themselves out to the world as commercial partners, are not bound *in solido* with those who do.[44] Thus, the publication of an advertisement, signed by A alone, announcing that "having bought the interest of B in the above business I will continue it under the firm of A & Co., admitting C and D to interests from this date," is not alone sufficient to warrant the interference that C and D were admitted as partners.[45]

9. *Effect of Not Preventing Use of Firm Name.*—While no liability can be created on the credit of a firm which has been dissolved unless the firm name is used in making purchases or other contracts subsequent to dissolution,[46] creditors of a partnership need not pay any attention to public rumors of dissolution where the use of the firm name and credit is continued.[47] Thus, where a retiring partner allows his name to be continued in the style of the firm with his express sanction and approval, he remains liable on the contracts and for the debts of the firm to the same extent as if he had actually continued a partner therein.[48] Even if he gives notice by publication in a newspaper that he has ceased to be a partner, but afterwards allows his name to appear in the firm as a partner and continues in its employment, he will be liable as a partner to one who deals with the firm, and is misled by the appearances, and has no notice that he is not a partner, although the fact is generally known at the place where the contract is made.[49] If he consents to the continued use of the firm name, he cannot deny his liability to one who gives credit to the firm in ignorance of the change, even though such creditor had no transaction with the firm until after the change.[50] But the fact that one of the members of a firm permits the use of his name as the firm name, does not authorize the firm, upon its dissolution, to confer such right upon a new firm subsequently organized.[51] And the mere fact that a partnership name has been kept over

[38] Butler v. Henry, 3 S. W. Rep. 878.

[39] *Re* Jewett, 7 Biss. (U. S.)328; 15 Bankr. Reg., 126. S. P.; Swann v. Sanborn, 4 Woods (U. S.), 625.

[40] Crook v. Davis, 28 Mo. 94.

[41] Campbell v. Hastings, 29 Ark. 512. See also Poillion v. Secor, 61 N. Y. 456.

[42] Hinman v. Little, 23 Mich. 484. See also on this subject, Hicks v. Cram, 17 Vt. 449.

[43] Gray *v.* Palmer, 9 Cal. 616.

[44] Cooper v. Burns, 6 La. Ann. 740.

[45] Appeal of Scull, 7 Atl. Rep. 588, followed in Johnston's Appeal, 9 *Id.* 76; Ackroyd's Appeal, *Id.* 77; Sanquoit Silk Mfg. Co.'s Appeal, *Id.* 77. In Casco Bank v. Hills, 16 Me. 155, two surviving partners published a notice "that the business of the late firm will, for the present, be carried on in the same name, under the charge of J H" (one of the partners), "who will continue, and who is duly authorized to adjust and settle matters relative to the same:" *Held*, that the surviving partners held out to the world that they would continue to transact business under that name, and that a note given by J H in the name of the firm was binding upon both.

[46] Kivy v. Hewitt, 26 Barb. (N. Y.) 607.

[47] Moline Wagon Co. v. Rummell, 2 McCrary (U. S.), 307.

[48] Freeman v. Falconer, 44 N. Y. Super. Ct. 132. See also Ellis v. Bronson, 40 Ill. 455; Speer v. Bishop, 24 Ohio St. 598. And compare Van Doren v. Horton, 19 Hun (N. Y.), 7.

[49] Waite v. Brewster, 31 Vt. 516.

[50] Richards v. Hunt, 65 Ga. 342; Richards v. Butler, *Id.* 593.

[51] Horton Mfg. Co. v. Horton Mfg. Co., 18 Fed. Rep. 816.

the door after the dissolution of the firm, is not of itself sufficient to authorize one who holds a note signed in the firm name to recover upon it.[52]

II. WHEN BINDING ON THE FIRM.

1. *When Admissible to Bind Firm Generally.*—While, as we have already seen, the admission of one partner is not sufficient to prove the existence of the copartnership as against the other partner,[53] but the partnership relation must first be proved *aliunde*[54]—when other evidence establishing the fact of partnership has been adduced, the admissions of one partner may be received to charge the partnership in relation to transactions during its existence.[55] The general rule is—subject to the exceptions noted later on—that the admissions or declarations of one partner, as to firm transactions, against the interest of the firm, are admissible to bind his copartners.[56] Even the declaration of a dormant partner are admissible if they relate to the partnership business.[57] But, in any case, the admission must have been relied upon, or it will be of no efficacy.[58] Where one partner gives a note for money borrowed for the firm and on its credit, this is a partnership debt, and a written admission by the other partner that the money was used for the purposes of the firm is competent evidence of the fact in a suit between firm creditors.[59] So, also, the answer of one partner, admitting the indebtness of the partnership, is sufficient to charge the partnership as garnishees.[60]

2. *When Inadmissible.*—On the other hand, where the authority of the partner making the admission to speak for his associates is not shown, his statements, so far as concerns them, are mere heresay. And, in any case, he can only bind his associates by his admissions within the scope of the business of the firm.[61] And while the admissions of a partner made during the partnership may be introduced as evidence against him in favor of creditors of the firm, they are not evidence against the creditors of the partnership for the purpose of diverting the firm assets to the payment of his individual debts.[62]

3. *Illustrative Cases.*—In applying the foregoing principles the following admissions have been held admissible as against the firm: The acknowledgment of service of a writ, written by one partner in the presence of the other, and with his consent;[63] the confession of one member of a copartnership of any fact tending to bind the whole, in a matter of joint concern;[64] entries made by one partner during the continuance of the partnership in a book of accounts.[65] But the court refused to admit the declaration of a partner that a liability incurred by a third person at his request, in borrowing a sum of money, was for the benefi of the firm.[66]

[52] Boyd v. McCann, 10 Md. 118.

[53] Corps v. Robinson, 2 Wash. (U. S.) 388; Evans v. Corriell, 1 Gr. (Iowa), 25; Lea v. Guice, 13 Smed. & M. (Miss.) 656.

[54] McFadgen v. Harrington, 67 N. C. 29; Nixon v. Downey, 42 Iowa, 78; Alcott v. Strong, 9 Cush. (Mass.) 323. See also McLellan v. Pennell, 52 Me. 402.

[55] Phillips v. Purington, 15 Me. 435; Gulick v. Gulick, 2 Gr. (N. J.) 578; Goodenough v. Duffield, Wright (Ohio), 455; Wolle v. Brown, 4 Whart. (Pa.) 365; Allen v. Owens, 2 Spears (S. C.), 170. Thus, in an action against partners jointly, an answer in chancery of one of them may be given in evidence by the plaintiff, after the partnership has been proved, to show admissions of the plaintiff's demand, and, in such case, evidence to discredit the answer cannot be offered by the other members of the copartnership: Hutchins v. Childress, 4 Stew. & P. (Ala.) 34. In some cases, however, it becomes necessary to prove the acts and declarations of one at a time, and, therefore, such testimony may properly be admitted, and the legal effect of it postponed until the judge instructs the jury upon the law of the whole case, whose duty it would be to inform them that the acts and declarations of a party, before the partnership is proved, bind himself only: Jennings v. Estes, 16 Me. 323.

[56] Fisk v. Copland, 1 Overt. (Tenn.) 383, where the court said it made no difference whether the suit was in the name of the firm or not.

[57] Kaskaskia Bridge Co. v. Shannon, 6 Ill. (1 Gilm.) 15.

[58] Thus, where the vendor of goods, at the time of the sale, professes to sell them to the vendee in his individual capacity, he cannot, in an action against the firm, of which the vendee was a member, give in evidence the declarations or admissions of such vendee that the goods were purchased for the benefit of the firm: Lararus v. Long, 3 Ired. (N. C.) L. 39.

[59] Anderson v. Norton, 15 Lea (Tenn.), 14.

[60] Anderson v. Wanzer, 5 How. (Miss.) 587.

[61] Heffron v. Hanaford, 40 Mich. 305. The first of these propositions is well illustrated by the case of Hotchkiss v. Lyon, 2 Blackf. (Ind.) 222. In that case, A entered into partnership with B in the business of tanning, and C bound himself in a covenant to B for A's conduct as a partner for a certain time. In an action by B against C on the covenant, the admissions of A, made after the expiration of the stipulated time, were held inadmissible as evidence against C.

[62] Bond v. Nave, 62 Ind. 506.

[63] Freeman v. Carhart, 17 Ga. 348.

[64] Odiorne v. Maxcey, 15 Mass. 39.

[65] Walden v. Sherburne, 15 Johns. (N. Y.) 409.

[66] Thorn v. Smith, 21 Wend. (N. Y.) 365. For further illustrations, see Story v. Barrell, 2 Conn. 665; Lang v. Fisk, 11 Me. 385; Foster v. Fifield, 29 Me. 136; where the admissions were received in evidence, and Clark v. Stoddard, 3 Ala. 366; Hickman v. Reinking, 6 Blackf. (Ind.) 388, where they were rejected.

4. *Declarations in Favor of Firm or Partner Making Them.*—The acts, declarations or admissions of one or two partners are not admissible as evidence for them, in an action against them as a firm, and where they have jointly pleaded the general issue.[67] So, also, the "admission" of one partner that his copartner was indebted to him cannot bind such copartner, in a suit by a person claiming through the former. A claim cannot be allowed so to prove itself under the name of an admission.[68] The rule is that the declarations of the alleged partners, unaccompanied by acts, and unconnected with any of their declarations proved by the other party, are inadmissible in their own favor.[69]

5. *Admission Subsequent to Dissolution.*—The rule is well settled that admissions of a partner, made after the dissolution of the firm, and not under a new authority, are inadmissible in evidence to bind the partnership.[70] Thus, the admission of one partner as to the existence of a debt against the firm, made subsequently to dissolution, is not binding upon the other partner.[71] But the admissions of a partner, made after dissolution, are competent evidence against the firm as to any contract made prior to such dissolution.[72] Partnership transactions with third persons, which took place after the sale of his present interest by one partner to another, and after the retiring partner had ceased to be a member of the firm, are not admissible against him upon the question of the value of his interest when sold, nor upon the question of fraud or mistake in the contract of sale, and equally inadmissible are judgments rendered against the new firm, to which the retired member was no party.[73] And one partner who, upon dissolution, has assigned all his interest in the firm assets to the other, cannot, by his mere declaration, made after such assignment, defeat an action brought in their joint names.[74] So, also, in *assumpsit* by partners for work and labor, statements of one of them, made after dissolution, so far as they tend to show a new contract destroying the partnership claim and giving to each partner a separate demand for his part of the debt, are not admissible; but his statements, so far as they show a payment made to himself, may be proved.[75] But the admissions of one partner, made at the time of the payment to him of a debt due to the partners, and at a time subsequent to a dissolution, are admissible against the other partners, as the admissions of an agent relative to an act within the scope of his authority, made at the time when such act was done, are admissible in evidence to bind his principal,[76] unless his want of authority be proved.[77] And, in any case, entries made after dissolution in the partnership books, may be given in evidence against the party who made them.[78] So, also, in Pennsylvania, under the statute of 1838, authorizing one firm to maintain an action against another, both having a common partner, the acts and declarations of such common partner, after dissolution of such partnership, are admissible in evidence.[79]

6. *Revival, by Admissions, of Debt Barred by Statute Limitations.*—After the dissolution of a partnership, an acknowledgment and promise to pay, made by one of the partners, will not revive a debt against the firm which is barred by the statute of limitations,[80]

[67] Hutchins v. Childress, 4 Stew. & P. (Ala.) 34.

[68] Lewis v. Allen, 17 Ga. 300.

[69] Phillips v. Purington, 15 Me. 425.

[70] Bispham v. Patterson, 2 McLean (U. S.), 87; Mercer v. Sayre, Anth. (N. Y.) 119; Parringer v. Sneed, 3 Stew. (Ala.) 201; Lansing v. Gaine, 2 Johns. (N. Y.) 300; Burns v. McKenzie, 23 Cal. 101; Daniel v. Nelson, 10 B. Mon. (Ky.) 316; Hamilton v. Summers, 12 *Id* 316; Pope v. Risley, 23 Mo. 185; Bank of Vergennes v. Cammeron, 7 Barb. (N. Y.) 143; Meggett v. Finney, 4 Strobh. (S. C.) 220; Perryhill v. McKee, 1 Humph. (Tenn.) 31.

[71] Wilson v. Torbet, 3 Stew. (Ala.) 296; Chardon v. Oliphant, Treadw. (S. C.) Const. 685; Vandes v. Lefavour, 2 Blackf. (Ind.) 371; Brady v. Hill, 1 Mo. 315; Ward v. Howell, 5 Harr. & J. (Md.) 60; Shelton v. Cocke, 3 Munf. (Va.) 191; White v. Union Ins. Co., 1 Nott. & M. (S. C.) 556; Hackley v. Hastie, 3 Johns. (N. Y.) 536; Gleason v. Clark, 9 Cow. (N. Y.) 57; Brewster v. Hardeman, Dud. (Ga.) 138; Conery v. Hayes, 19 La. Ann. 325; Chardon v. Oliphant, 3 Brev. (S. C.) 183. But see Simpson v. Geddes, 2 Bay (S. C.), 533; Kendrick v. Campbell, 1 Bail. (S. C.) 522; Vinal v. Burrill, 16 Pick. (Mass.) 401.

[72] Mann v. Locke, 11 N. H. 246; Taylor v. Hillyer, 3 Blackf. (Ind.) 433.

[73] Dortie v. Dugas, 55 Ga. 484.

[74] Owings v. Low, 5 Gill. & J. (Md.) 134.

[75] Lefavour v. Vandes, 2 Blackf. (Ind.) 240.

[76] Kirk v. Hiatt, 2 Ind. 322; Gay v. Bowen, 8 Metc. (Mass.) 100.

[77] Beckam v. Peay, 1 Bail. (S. C.) 121.

[78] Simonton v. Boucher, 2 Wash. (U. S.) 473.

[79] Tassey v. Church, 4 Watts & S. (Pa.) 141. See also Bridge v. Gray, 14 Pick. (Mass.) 55; Dixon v. Barclay, 22 Ala. 370; Doremus v. McCormick, 7 Gill (Md.), 49; Ostrom v. Jacobs, 9 Metc. (Mass.) 454.

[80] Van Keuren v. Parmalee, 2 N. Y. 523; Walsh v. Cane, 4 La. Ann. 533; Kauffman v. Fisher, 3 Gr. (Pa.) Cas. 302; Reppert v. Colvin, 48 Pa. St. 248. *Contra:*

unless the one doing the act of making the acknowledgment has become the liquidating partner.[81] Even the surviving partner's acknowledgment of the claim will not bind the estate of a deceased partner if the claim is barred by statute as against the estate.[82]

7. *Acceptance of Service of Process by One Partner.*—The weight of authority is to the effect that service of process on one partner, in an action against the firm, is not equivalent to service upon all,[83] and will not be notice to them.[84] In some jurisdictions however, the rule is not strictly applied. Thus, in Iowa, service upon one member of a firm is sufficient to give the court jurisdiction over the other members.[85] In Louisiana, persons associated together carrying personal property for hire in vessels, are commercial partners, and may be cited in the manner prescribed for the citation of such associations, but it is only where they are associated together under a title, or as a firm that the service of a citation addressed to the partnership in its social name, made on one of its members only, is sufficient.[86] Thus, suit being brought against R F and C W, as composing the commercial firm of R F & Co., and the petition and citation being served on R F alone, it was held that the service was sufficient as to both.[87] In some other States, also, firm property, or the separate property of the partner served, may be subjected to the debts of the firm by service of process on one member of the firm.[88] Even after dissolution such service has been held good. Thus, it has been decided that where a firm or its survivors are sued, it is not necessary to pray process against all of them, nor is a return of *non est inventus* necessary to bind the interests in the partnership effects of those not served;[89] and that a service of notice upon one member of a firm after dissolution, if sued as partners, would be sufficient to give the court jurisdiction of the parties, so far as to authorize a judgment against the firm, as such, to be satisfied out of the joint property, or the separate property of the partner served.[90]

But the better opinion seems to be that, after the dissolution of the partnership, service upon one of the partners, in an action against all as late partners, is not service upon the others.[91] Thus, a service made on one partner after dissolution, is clearly insufficient in a case where the interest of the partner upon whom the service is made is adverse to that of the partners who are not served with notice.[92] And a judgment rendered in a sister State, after dissolution, does not personally bind a partner not served and who did not appear in the case, although the other partners were served, or appeared and caused an appearance to be entered for all.[93] So, also, where a defendant is sued as silent partner in a commercial firm, service of citation on the clerk of the firm is not sufficient.[94]

8. *Confession of Judgment by One Partner.*—The general rule is that one partner cannot bind his copartners by a confession of judgment without their consent.[95] Such judgment will bind the partner who confessed it, and be void as to the others.[96] Thus, a prior judgment confessed by two of three partners for a firm debt, is a lien upon the interest of the two in the property, and is

See Smith v. Ludlow, 6 Johns. (N. Y.) 267; Ward v. Howell, 5 Harr. & J. (Md.) 60; Neal v. Hassan, 3 McCord (S. C.), 278; Greenleaf v. Quincy, 11 Me. 11. See also Carroll v. Gayarre, 15 La. Ann. 671.

[81] William v. Waugh, 101 Pa. St. 233.

[82] Espy v. Comer, 76 Ala. 501.

[83] Beal v. Snedicor, 8 Port. (Ala.) 523; Duncan v. Tombeckbee Bank, 4 Port. (Ala.) 181; Demoss v. Brewster, 12 Miss. 661; Faver v. Briggs, 18 Ala. 478; Rice v. Doniphan, 4 B. Mon. (Ky.) 123; Scott v. Bogart, 14 La. Ann. 261.

[84] Demoss v. Brewster, 12 Miss. 661.

[85] Gregory v. Harmon, 10 Iowa, 445; Walker v. Clark, 8 Iowa, 474; Saunders v. Bentley, *Id.* 516.

[86] Hefferman v. Brenham, 1 La. Ann. 146.

[87] Kearner v. Fenner, 14 La. Ann. 870.

[88] Alexander v. Stern, 41 Tex. 193; Hale v. Van Saun, 18 Iowa, 19; Flannery v. Anderson, 4 Nev. 437; Brooks v. McIntyre, 4 Mich. 316; Kidd v. Brown, 2 How. (N. Y.) Pr. 20; Stoutenburgh v. Vanderburgh, 7 *Id.* 229. See also *In re* Lowenstein, 7 How. (N. Y.) Pr. 100.

[89] Printip v. Turner, 65 Ga. 71.

[90] Hale v. Van Saun, 18 Iowa, 19.

[91] Beal v. Snedicor, 8 Port. (Ala.) 523; Faver v. Briggs, 18 Ala. 478.

[92] Stephens v. Parkhurst, 10 Iowa, 70.

[93] Bowler v. Huston, 30 Gratt. (Va.) 266.

[94] Ridge v. Alter, 14 La. Ann. 866.

[95] Christy v. Sherman, 10 Iowa, 535; Edwards v. Pitzer, 12 *Id.* 607; North v. Mudge, 13 *Id.* 496; Crane v. French, 1 Wend. (N. Y.) 311; Barlow v. Reno, 1 Blackf. (Ind.) 252; Everson v. Gehrman, 1 Abb. (N. Y.) Pr. 167; Shedd v. Bank, etc., 32 Vt. 709; Remington v. Cummings, 5 Wis. 138. To the contrary: Lahey v. Kingon, 13 Abb. (N. Y.) Pr. 192; s. c., 22 How. Pr. 209.

[96] Bennett v. Marshall, 2 Miles (Pa.), 436; Bitzer v. Shunk, 1 Watts & S. (Pa.) 340; Herrick v. Conant, 4 La. Ann. 276; Mitchell v. Rich, 1 Ala. 228; Morgan v. Richardson, 16 Mo. 409; Sloo v. State Bank, 1 Scam. (Ill.) 428; York Bank's Appeal, 36 Pa. St. 458.

superior to subsequeut judgments recovered against the whole firm.[97] But the other partners may ratify the act of the one confessing the judgment. Thus, where a warrant of attorney to confess a judgment was executed in the firm name of the defendants, it was held on error that the court would intend that the warrant, although executed by one partner only, was adopted by the others.[98] And where a bond with a warrant to confess judgment is executed one partner, and subsequently by all the partners revive the judgment by their attorney, it is a ratification.[99] A judgment confessed by one of two copartners using a corporate name, may bind the other, if the circumstances create a belief that he knew of it and intended to be bound.[100] In any event, a creditor of the firm cannot be permitted to object to a judgment against the firm on the ground that it was confessed by one partner; and a sale of partnership property on an execution issuing upon such judgment will pass a perfect title to the purchaser, but the judgment will not affect the persons or the separate property of the other partners.[101]

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[97] Stevens v. Bank of Central New York, 31 Barb. (N. Y.) 290. See also, generally, Grazebrook v. McCreedie, 9 Wend. (N. Y.) 437; Binney v. Legal, 19 Barb. (N. Y.) 592; Richardson v. Fuller, 2 Oreg. 179; Kauffman v. Fisher, 3 Gr. (Pa.) Cas. 302.

[98] Bissell v. Carville, 6 Ala. 503.

[99] Overton v. Tozer, 7 Watts (Pa.), 331.

[100] Bivingsville Mfg. Co. v. Robe, 11 Rich. (S. C.) 386. In the following cases a judgment by confession by one partner was held to bind the firm: Kidd v. Brown, 2 How. (N. Y.) Pr. 20; Stoutenburgh v. Vandenburgh, 7 *Id.* 229; Ross v. Howell, 84 Pa. St. 129; Hewitt v. Patrick, 26 Tex. 326.

[101] Grier v. Hood, 25 Pa. St. 430.

WHEN A TRUST MAY BE ESTABLISHED UPON PERSONAL PROPERTY BY PAROL AGREEMENT—STATUTE OF LIMITATIONS.

THOMAS V. MERRY.

Supreme Court of Indiana, January 20, 1888.

1. A made a conveyance of real estate to B, who held it in trust for A. Afterwards B sold the realty to C, and by parol agreement kept the proceeds for the use and benefit of A: *Held*, that such parol agreement created a trust that may be enforced after the sale.

2. A claim was made against the estate of the ancestor, alleging an indebtedness for money had and received before his death in trust for claimant's use. All questions as to such trust and the amount thereof had been adjudicated and determined in claimant's favor in the circuit court in a suit by such claimant as plaintiff, against the heirs and personal representatives: *Held*, sufficient upon demurrer.

3. The statute of limitations begins to run against a trust only from the time it is openly and unequivocally disavowed by the trustee.

4. Assessments of excessive damages as cause for a new trial applies only in actions of tort.

HOWK, J., delivered the opinion of the court:

Appellee's claim or complaint against the estate of Samuel Merry, deceased, whereof appellant, Thomas, was administrator, contained two paragraphs. Issue was joined thereon by appellant's answer in general denial, and the trial thereof by the court resulted in the finding for appellee in the sum of $2,100, and over appellant's motion for a new trial the court rendered judgment on its finding. Errors are assigned here by appellant, the defendant below, which call in question the overruling of his demurrer to each paragraph of appellee's claim or complaint, and the overruling of his motion for a new trial. We will consider these errors in the order of their statement and decide the question thereby presented.

In the first paragraph of his claim or complaint the appellee alleged that the estate of Samuel Merry, deceased, appellant's intestate, was indebted to appellee in the sum of $1,400, and interest thereon amounting to $1,200; that on August 27, 1860, appellee conveyed to said Samuel Merry, since deceased, lots Nos. 31 and 32, in Chauncey Roses' subdivision of 84 65-100 acres off the north end of the northwest quarter of section 22, township 12 N. of range 9 W., in Vigo county, Indiana; that such real estate was so conveyed to said Samuel Merry, at and for the consideration of $5,000, to be held by him in trust for appellee; that afterwards, by an agreement by and between appellee and said Samuel Merry, since deceased, the said Samuel conveyed such real estate to one Adam C. Mattox, at and for the price of $2,400, and received such sum therefor from said Mattox, and kept and retained the same, under such agreement, for the use and benefit of appellee, and that, by such agreement, the said Samuel was to furnish appellee with a home in the town of Brazil; that on the———day of———, 187-, said Samuel Merry, since deceased, purchased, with part of the sum of money last aforesaid, lot No. 12, in Hendrix fourth addition to the town of Brazil, at and for the price of $800, and also a wagon and team at and for the sum of $200; that afterwards said Samuel Merry, since deceased, purchased for appellee a suit of clothes for the sum of $18, for which sum appellee had given credit to such decedent's estate; and that said Samuel Merry, since deceased, had the use and benefit of said trust fund of $2,400, since March 4 1871, with the exceptions above set forth, amounting in the aggregate to the sum of $1,018. Wherefore, etc. In the second paragraph of his

claim or complaint herein, after stating the indebtedness to him of such decedent's estate, the appellee alleged that on the twenty-fifth day of June, 1885, in an action in the Clay circuit court, of Clay county, Indiana, wherein appellee herein was plaintiff, and the appellants herein and those in privity with them, to-wit, the heirs at law of said Samuel Merry, deceased, were defendant, the identical matters set forth herein, so far as the trust and the money had and received were involved, were upon issue joined tried: that in said action the issue was whether or not a certain house and lot in Brazil, in Clay county, had been purchased by said Samuel Merry, deceased, with funds (to recover the balance of which this suit was brought) belonging to appellee, and the title thereto taken in such decedent's name; that, upon the trial of said issue, the same was found and declared in favor of appellee, and said Clay circuit court adjudged that the funds with which said decedent paid for said house, which appellee alleged was a part of the funds for which he sued in this action, were held by said decedent in trust for appellee. Wherefore, etc. Each paragraph of appellee's claim or complaint herein was demurred to by appellant, Thomas, solely upon the ground that it did not state facts sufficient to constitute a cause of action. These demurrers were severally overruled by the trial court, and these rulings constitute the first errors of which appellant's counsel complain here in argument.

In section 2310, Rev. Stat. 1881, in force since September 19, 1881, it is provided that the holder of any claim against the decedent's estate "shall file a succinct and definite statement thereof in the office of the clerk of the court in which the estate is pending." In construing this provision, and similar provisions in previous statutes regulating the settlement of decedents' estate, it has been held by this court that while the holder of a claim against a decedent's estate is not required to file a formal complaint against the estate, under the ordinary rules of pleading in civil action, yet "the succinct and definite statement" of his claim, which the statute requires him to file in the clerk's office of the proper court, must contain all the facts necessary to constitute *prima facie* a cause of action in his favor, due or to become due, from such estate. Huston v. Bank, 85 Ind. 21; Windell v. Hudson, 102 Ind. 521, 2 N. E. Rep. 303; Walker v. Heller, 104 Ind. 327, 3 N. E. Rep. 114; Culver v. Yundt, 14 N. E. Rep. 91, (decided at this term). Appellant's learned counsel vigorously contend that the first paragraph of appellee's claim was clearly bad on demurrer, because, as counsel claim, it rests upon and seeks to enforce an alleged parol trust in real estate. If counsel were right in their construction of the first paragraph of the complaint, and of the relief sought thereby, they would be right, also, no doubt, in claiming that the paragraph was bad, and that the demurrer thereto ought to have been sustained; for it is settled, by our decision that an express trust in real estate cannot be created by parol. Mescall v. Tully, 91 Ind. 96, and authorities there cited. We are of opinion, however, that appellant's counsel wholly misapprehended the force and effect of the facts stated by appellee in the first paragraph of his claim herein. It is true that the claimant averred, almost at the outset of the first paragraph of his claim, that on August 27, 1860, he sold and conveyed to appellant's testate, Samuel Merry, since deceased, certain described real estate in Vigo county, for the consideration of $5,000, to be held by said Samuel Merry, in trust for such claimant. But we regard this averment to be simply intended as an introduction to, and explanation of, the other facts stated by appellee in the first paragraph of his claim; and that such averment was so intended, we think, is clearly shown by such facts. Certainly, the claimant did not base his claim herein on the parol trust in such real estate, nor did he seek to enforce such trust in this suit.

Appellee's claim against the the estate of appellant's testate, as stated in the first paragraph thereof, was based upon the agreement made long afterwards by and between him and said Samuel Merry, since deceased, to the effect that such real estate, so conveyed as aforesaid by the claimant herein to said Samuel Merry, should be sold and conveyed to one Mattox for the sum of $2,400, and that said Samuel Merry should receive from said Mattox the proceeds of such sale and conveyance of such real estate; and the claimant averred that, under this last agreement, such real estate was sold and conveyed to said Mattox for the price aforesaid, and that said Samuel Merry received the proceeds of such sale from said Mattox, and received the same under such agreement, for the use and benefit of such claimant. It is clear, we think, that the trust arising under this last agreement in favor of the claimant herein was a trust relating only to personal estate namely, the moneys so received from said Mattox by said Samuel Merry, and retained and held by him in trust for such claimant. It is settled, by our decisions, that a trust in personal property or money may be created by parol; Hon v. Hon, 70 Ind. 135; Hunt v. Elliott, 80 Ind. 245; Mohn v. Mohn, 13 N. E. Rep. 859, (decided at last term.) In the last case cited the averments of the second paragraph of the complaint, as stated in the opinion of the court, were substantially the same as those of the first paragraph of the claim in the case in hand. In the case cited it was held, in effect, that where lands have been conveyed to the grantee upon his parol agreement to hold the same in trust for the grantor, although such agreement was void, yet such an equitable obligation would arise therefrom as would constitute a good and sufficient consideration to sustain such grantee's subsequent agreement to hold the proceeds of the sale of such lands in trust for such grantor; that such second paragraph of complaint, therefore, stated a good cause of action upon such subsequent agreement; and that the court below had erred in that case in sustaining a demurrer to

to such second paragraph of complaint. Calder v. Moran, 49 Mich. 14, 12 N. W. Rep. 892. In the case under consideration, we are of opinion that the facts stated by the claimant in the first paragraph of his complaint are amply sufficient to constitute a valid claim against the estate of appellant's testate, and that the demurrer thereto was correctly overruled.

We have heretofore given a full statement of the facts averred by the claimant in the second paragraph of his claim or complaint, wherein he sued to recover of the estate of the appellant's testate the same alleged indebtedness to him described in the first paragraph of such claim or complaint. After averring, in such second paragraph, that the indebtedness of such estate to him was for money had and received in trust, to the use of the claimant, by said decedent in his life-time, the claimant further alleged, in substance, that the questions in relation to such trust, and to the amount of money had and received by such decedent in his life-time, in trust for claimant, had been ascertained and adjudicated by the Clay circuit court, in this State, in a certain suit theretofore pending therein, in which such claimant was plaintiff, and the personal representatives and heirs at law of such decedant were defendants, and in which such questions were directly in issue, and were there decided and determined by that court in favor of the claimant herein. This adjudication is not pleaded with much clearness or certainty by the claimant in the second paragraph of his claim herein; but it is well settled that uncertainty in the statement of facts affords no sufficient grounds for sustaining a demurrer to any pleading, if enough facts are contained therein. Railway Co. v. Hixon, 110 Ind. 225, 11 N. E. Rep. 285, and cases there cited. While the second paragraph of appellee's claim can hardly be regarded as a model of good pleading, the facts stated therein were sufficient, we think, to constitute a cause of action against the decedent's estate, and to require of appellant an answer thereto. There was no error, therefore, in overruling the demurrer to the second paragraph of complaint.

Under the alleged error of the court in overruling appellant's motion for a new trial, his counsel very earnestly insist that the finding of the court was not sustained by sufficient evidence. The appellee was the son of Samuel Merry, deceased. The oral evidence introduced by appellee on the trial of this cause tended to prove statements made by the decedent in his life-time, to the effect that his son William, appellee herein, had been reckless and dissipated, and had conveyed his property in Terre Haute to him, such decedent, by the procurement of the latter, and his son William would have to settle in Brazil; that he, such decedent, had got of his son William, plaintiff herein, a house and lot in Terra Haute, and had kept it for him; that he, the decedent, had sold the Terra Haute property for the sum of $2,400, and bought the house and lot in Brazil for his son William; had taken the deed in his own name; and that he, the decedent, had also bought a wagon and team for his son William. Other oral evidence, introduced by appellee, tended to prove that said Samuel Merry, deceased, had paid the sum of $800 for the said house and lot in Brazil, and the sum of $200 for the said wagon and team bought by him in his life-time for his son William, the plaintiff herein. It may be true that this oral evidence, if it were the only evidence appearing in the record, would not sustain the finding of the trial court. But appellee also gave in evidence a certified transcript of the record of the Clay circuit court, showing the adjudication set forth in the second paragraph of his claim or complaint herein, substantially as the same is there pleaded. In the case in the Clay circuit court, wherein the claimant herein was plaintiff, and the personal representatives and heirs at law of said Samuel Merry, deceased, were defendants, the controlling question for decision, under the issues joined therein, was this: whether or not such decedent, in his life-time, received the proceeds of the sale of the house and lot in Terre Haute, theretofore conveyed to him by such plaintiff, upon his agreement to hold such proceeds in trust for the use and benefit of plaintiff. In that case the plaintiff had stated in his complaint the facts in relation to such alleged trust, substantially as he has stated the same facts in the first paragraph of his claim herein; and upon issue joined on such complaint, and a full hearing had, the Clay circuit court found an adjudged, upon such issues, the question above stated in favor of the plaintiff herein; the claimant in the case we are now considering. We have no doubt that the transcript of the record of such adjudication was not only competent but conclusive evidence upon the question there involved, which is the controlling question in the case at hand, namely, whether or not the proceeds of the sale of the Terre Haute property were received by said Samuel Merry, deceased, in his life-time, upon his agreement to hold the same in trust for the use and benefit of the claimant herein. The competency and conclusive character of such an adjudication were carefully considered by the Supreme Court of Illinois in Hanna v. Read, 102 Ill. 596. The learned court there said: "Whether the adjudication relied on as an estoppel goes to a single question or all the questions involved in a cause, the fundamental principle upon which it is allowed in either case is that justice and public policy alike demand that a matter, whether consisting of one or many questions, which has been solemnly adjudicated by a court of competent jurisdiction, shall be deemed finally and conclusivley settled in any subsequent litigation between the same parties, where the same question or questions arise, except where the litigation is a direct proceeding for the purpose of reversing or setting aside such adjudication." What we have quoted seems to be fully sustained

by the numerous authorities—State, federal, and English—cited by the court in its opinion. The same doctrine has been recognized and fully approved in many of our own decisions. Felton v. Smith, 88 Ind. 149; Cleveland v. Creviston, 93 Ind. 31, and cases there cited; Kilander v. Hoover, 111 Ind. 10, 11 N. E. Rep. 796.

The finding of the trial court was, we think, sustained by sufficient evidence. But it is claimed by appellant's counsel that the damages assessed by the court were excessive, and that, for this cause a new trial ought to have been granted. On the other hand, appellee's learned counsel contend that this cause for a new trial applies only to actions in tort, and does not call in question the amount of appellee's recovery. This contention of counsel is supported by our decisions. Railroad Co. v. Acres, 108 Ind. 548, 9 N. E. Rep. 453, and cases there cited. But we are of opinion that, if the question were properly presented, appellant would have no sufficient cause to complain of the amount of appellee's recovery. It is manifest that appellee was allowed by the trial court interest at the rate of 6 per cent. per annum during part of the time the appellant's decedent held and had the use of the trust fund. There was no error, we think, in such allowance of interest. Rochester v. Levering, 104 Ind. 562, 4 N. E. Rep. 203.

There is nothing in the record of this cause to show that appellee's claim herein was barred by the statute of limitations, or that the statute had ever commenced to run against such claim, in the life-time of the decedent. The trust established by the evidence in this case was shown, we think, to be a continuing trust in the settlement of which delay was contemplated by the parties thereto. It is nowhere shown in the record before us that the decedent, in his life-time, ever denied or disavowed such trust. Time begins to run against a trust only from the time when it is openly disavowed by the trustee, who insists upon an adverse right and interest, which is fully and unquivocally made known to the *cestui que trust*. Albert v. State, 65 Ind. 413; Hileman v. Hileman, 85 Ind. 1; Langsdale v. Woollen, 99 Ind. 575.

There is no such thing shown by the record of this cause as the splitting of appellee's cause of action. It is shown that appellee claimed to have two causes of action against the decedent,—one to acquire the legal title to the house and lot in Brazil, of which the Clay circuit court had exclusive, original jurisdiction, and the other was a claim against decedent's estate for money had and received by the decedent in his life-time, in trust for the appellee. Of this latter cause of action, the court below, wherein the decedent's estate was pending for settlement, had exclusive, original jurisdiction. The two suits were therefore properly commenced by appellee in these two courts, without any splitting of either of his two causes of action.

We have found no error in the record of this cause which authorizes or requires the reversal of the judgment. The judgment is affirmed, with costs.

NOTE.—Whether trusts in personal property may be declared and proved by parol evidence is a mooted question by many of the English cases.[1] In Fordyce v. Willis,[2] Mr. Elden said, that "he had not been able to find an instance of a declaration of trust of personal property evidenced only by parol having been carried into execution." Moreover, in Smith v. Attersoll,[3] there were written declarations of trust, and the question was as to the effect of the writings, though it was remarked that trusts of personalty could be evidenced by parol.[4] In the United States the doctrine that trusts in personal property may be declared and proved by parol evidence seems to be quite well established.[5]

In McFadden v. Jenkyns,[6] it was directly held that a parol declaration was sufficient to create a trust in personal property. If there are doubts and difficulties upon the supposed words, the court will give weight to the fact that they were not written to infer that they may not be the deliberate sentiments of the party.[7]

Where her daughter delivered to her father $7,000 upon the parol trust that he would secure the money in trust for her and invest it for her sole benefit, and the father made his will giving said notes to two trustees to receive and pay over the income and interest to the daughter during her life, and at her decease to pay the principal to such persons as she, by her last will, should direct and appoint, and in default of such appointment to her heirs-at-law; the father died and his estate turning out insolvent, she brought a bill praying that the notes might be delivered to some person to be appointed by the court as trustee for her. The court held that the father, his executors and his heirs and creditors were bound by the trust, and that it was not in the power of the trustee to divest or defeat the trust without the consent of the *cestui que trust*, except by a sale of the trust property to a *bona fide* purchaser for a valuable consideration. Nor could the trustee vary the terms of the trust, or declare any new trust to the prejudice of the *cestui que trust*, unless with her consent.[8] Where part of the money for the purchase of land is supplied by one person, and the title to the land when purchased is taken in his own name by another who has supplied the remainder, equity will declare a proportionate resulting trust in favor of the first, and the fact that the agreement for the joint purchase was not in writing will not bring the case within the statutes of frauds.[9]

[1] Nab v. Nab, 10 Mod. 404; 1 Eq. Ca. Ch. 404; Jones v. Nab, Gil. Eq.

[2] 3 Bro. Ch., *n.*

[3] 1 Russ. 274.

[4] Metham v. Devon, 1 P. Wms. 529; Inchquin v. French, 1 Cox, 1; Crook v. Brooking, 2 Vern. 50, 106; Ashton v. Langdall, 4 DeG. & S. 402; 4 Eng. L. & Eq. 80.

[5] Robinson v. Harwell, 6 Ga. 589; Higgenbotham v. Peyton, 3 Rich. Eq. 398; Crissman v. Crissman, 23 Mich 218; Gordon v. Green, 10 Ga. 534; Kirkpatrick v. Davidson, 2 Kelley, 297; Hooper v. Homes, 3 Stock. 122; Hunnewell v. Lane, 11 Met. 163; Thorp v. Owens, 5 Beav. 224; Peckham v. Taylor, 3 Beav. 250; Hawkins v. Gordon, 2 Sm. & Gif. 451; Maffit v. Rynd, 69 Pa. St. 30; Berry v. Norris, 1 Drew. 302; Simms v. Smith, 11 Ga. 195; Kimbree v. Morton, 1 Halst. Ch. 31; Day v. Roth, 18 N. Y. 448; Wheatly v. Purr, 1 Keen, 551.

[6] 1 Phill. 153; 1 Hare, 458.

[7] Dipple v. Cordes, 11 Hare, 183; Paterson v. Murphy, *Ib.* 91, 92; Harvey v. Hardener, 21 Cent. L. J. 240.

[8] Hunnewell v. Lane, 11 Met. 163.

[9] Harris v. McIntire, 8 N. E. Rep. 182; Edinger v. Heiser, 23 Cent. L. J. 455.

It was agreed between A and B, that if B would undertake the management of A's affairs and collect in certain funds due to her, that "B should retain out of the first money received on her account the amount of one thousand dollars, five hundred of which was to be his then, and the remaining five hundred he was to retain and use as his own, but at her death was to pay over to C the amount of the five hundred dollars, without interest:" *Held*, that this agreement created a gift to be in trust for the use of C, to be paid to C at the death of A without accountability for interest.[10]

To establish a trust in personal property upon parol evidence, especially after the lapse of considerable time, the evidence must be very clear and satisfactory, and find some support in the surrounding circumstances and in the subsequent conduct of the parties.

Limitation by Statute.—When a trustee repudiates the trust by clear and unequivocal acts or words and claims thenceforth to hold the estate as his own, not subject to any trust, and such repudiation and claim are brought to the notice or knowledge of the *cestui que trust* in such manner that he is called upon to assert his equitable rights, the statute will begin to run from the time that such knowledge is brought home to the *cestui que trust*, and he will be completely barred at the end of twenty years if he has been *sui juris* or under no disability, and is capable of bringing an action to maintain his rights.[11]

The statutes of limitations of two years will run against the owner of personal property who has established a trust upon it in favor of the possession of the *cestui que trust*, where the latter sets up an open public claim to the property adverse to the owner, and to the continuance of the trust from the time when such adverse claim is brought home to the knowledge of the owner.[12]

In order to sustain a plea of limitation by a trustee ounded upon his declarations and acts of ownership adverse to the claim of the *cestui que trust*, such acts and declarations must be continuous and constant, not now denying the trust and again admitting it; admitting it to some persons and denying it to others.[13] Possession for forty years by a religious society under an act incorporating them as a congregational society, of a meeting house previously conveyed to their prudential committee in trust for the support of Presbyterianism, will bar a suit in equity to enforce the trust.[14]

Nicholson, in 1795, transferred to Tate shares in a land company, and after sixty years there having been no assertion of a trust by Nicholson or his representatives, or recognition by Tate or his representatives, a claim that the transfer of the stock was not absolute but in trust is stale. When the trust is merely implied or constructive, there has been some disagreement among the cases as to when the statutes of limitations commenced running in favor of the trustee, but the better opinion seems to be that as in general the facts out of which such trusts arises, from their very nature presuppose an adverse claim of right on the part of the trustee by implication from the beginning, the statute will commence to run against the *cestui que trust* from the period at which he could have vindicated his right by action or otherwise.[15] Moreover, to enable a trustee, without giving up the possession, to turn it into an adverse holding against the *cestui que trust*, the evidence must be clear and unmistakable, and such adverse claim must be brought home to the *cestui que trust* beyond question or doubt. The attitude of the trustee must be hostile, and continuously so, and there must be no mistake or misapprehension as to the character of his holding by either party.[16]

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[10] Gordon v. Green, 10 Ga. 534; Crissman v. Crissman, 23 Mich. 217.

[11] Hubbell v. Medbury, 53 N. Y. 98; Grumbles v. Grumbles, 17 Tex. 472; Williams v. First Presby. Society, 1 Ohio St. 478; Robertson v. Wood, 15 Tex. 1; Halsey v. Tate, 52 Pa. St. 311; Hunter v. Hubbard, 26 Tex. 537; Curtis v. Daniel, 23 Ark. 363; Neel v. McElhaney, 69 Pa. St. 300; Portlock v. Gardener, 1 Hare, 594; Wedderbuck v. Wedderburn, 2 Keen, 749; Bright v. Egerton, 2 DeG. F. & J. 606; Atty.-Gen. v. Federal St. Meeting House, 3 Gray, 1; Kane v. Bloodgood, 7 Johns. Ch. 90; Baker v. Whiting, 3 Sumn. 486; Merriam v. Hassom, 14 Allen, 522; Perry on Trusts, § 864.

[12] Turner v. Smith, 11 Tex. 620.

[13] Grumbles v. Grumbles, 17 Tex. 473.

[14] Atty.-Gen. v. Fed. St. Meeting House, 3 Gray, 1.

[15] Talsey v. Tate, 52 Pa. St. 311.

[16] Scott v. Haddock, 11 Ga. 258; Moffatt v. Bingham, 11 Humph. 369; Andrews v. Smithwick, 20 Tex. 111; Cunningham v. McKindley, 22 Md. 149.

WILL—CONTRACT TO DEVISE—CONSIDERATION—STATUTE OF FRAUDS.

PFLUGAR V. PULTZ.

New Jersey Court of Chancery, October Term, 1887.

In June, 1883, defendant verbally agreed with complainant that, if she would do his housework and take care of him during the remainder of his life-time, he would devise to her the house and lot wherein he then lived. She did thus care for him until 1886, when, without sufficient cause, he left the place to live with one M, and shortly afterwards made and delivered to M a deed for his house and lot, taking from M a bond conditioned that M should support him during his life-time: *Held*, 1. That complainant was entitled to relief by enjoining the conveyance of the property to M. 2. That the agreement was not invalid under the statute of frauds, and was enforceable.

BIRD, V. C.: This bill is filed to enjoin the defendant Pultz from conveying property which he had agreed with the complainant to devise to her by his last will and testament, in case, as is alleged, she should enter into his service and take care of him and nurse him during the remainder of his life. It is admitted that in June, 1883, Mr. Pultz agreed with Mrs. Pflugar, the complainant, that if she would go into his service and do his housework, and nurse and take care of him in his sickness during the remainder of his life, he would make and execute a last will and testament, and would therein and thereby devise to her the house and lot in which he then lived; and it was also agreed that she accepted the offer, and entered into his service and undertook the performance of the duties required by the agreement, and continued to do so in a satisfactory manner to Mr. Pultz until about the month of May, 1885. And it is also admitted that, at the last named period some difficulties arose between them, which were settled by Mr. Pultz taking his last will and testament, which he had previously executed, to a

mutual friend, who explained its provisions to Mrs. Pflugar, and satisfied her that it was according to the promises of Mr. Pultz, as had been expressed in their agreement, and also that she was secure in her rights under the said will as it was drawn. And it is also admitted that thereafter she continued in the same service without any great amount of dissatisfaction on the part of Mr. Pultz, until the month of June, 1886, when difficulties arose between them, and he left the house in which they were living, and the one which they contemplated should be devised to Mrs. Pflugar, and went to board with a Mr. and Mrs. M; and that afterwards, on the 26th of July, he made and delivered a deed of conveyance of the said house and lot to the said Mrs. M, taking from her a bond conditioned that she should provide for him during his natural life; and from that time he continued to board with the said Mrs. M, but slept in the house so conveyed to her, which house was all the while occupied by Mrs. Pflugar, the complainant.

The defense is, that Mrs. Pflugar is not entitled to any relief because she violated the contract under which she claims, and also because she gave notice to Mr. Pultz that she intended to leave his service, which notice, it is alleged, he acted upon, and made provision accordingly, for his own wants and comfort. The allegation respecting such notice rests upon the testimony of Mr. Pultz alone. Mrs. Pflugar swears that she gave no such notice, but frankly admits that she said to him that there were two other places where she could find employment, and that was all she ever said upon the subject. This is all the proof, and Mr. Pultz has nothing else to support his attempt to get rid of his obligation. He admitted that he went at once to Mrs. M, and that Mrs. Pflugar remained in possession of the house and continued there until he made the deed to Mrs. M, and has remained there ever since. He produces no other proof that she ever signified her intention to abandon her contract. But it is said, however, that she did not faithfully perform the contract; that she did not always provide for him and attend to his wants and necessities as she should have done. While there may be some slight evidence in support of this, Mrs. Pflugar is very emphatic to the contrary, and she is supported by the unequivocal admissions of Mr. Pultz made to others, and by the clear and distinct statement from others of what they saw when they had opportunity to make observations respecting her housekeeping and her treatment of the defendant. I must, therefore, conclude that the defense in these particulars fails.

The only question remaining is, whether or not the complainant can have relief under the circumstances? In such an agreement, resting in parol, binding, when the promisee has honestly and faithfully entered upon the performance of it, and for years abided by its provisions? I conclude that the true meaning and spirit of the authorities sustain such an agreement. Updike v. Ten Broeck, 3 Vr. 105; Kent v. Kent, 62 N. Y. 560; Peters v. Westborough, 19 Pick. 364; Ridley v. Ridley, 34 Beav. 478; Bell v. Hewitt, 24 Ind. 280.

It is yet to be considered whether such an agreement, independently of the question whether it must be in writing or not, can be enforced. And I conclude that all of the authorities in this country hold the affirmative. Davison v. Davison, 2 Beas. 246; Johnson v. Hubbell, 2 Stock. 332; Van Dyne v. Vreeland, 3 Stock. 370; S. C., 1 Beas. 142; Parsell v. Stryker, 41 N. Y. 480; Jenkins v. Stetson, 9 Allen, 128.

The complainant is entitled to the relief prayed for.

NOTE.—In Johnson v. Hubbell, 2 Stock. 332, 66 Am. Dec. 773, 784 note, are collected many cases on the validity of contracts to dispose of property by will. Some additional cases are here cited: Brookman's Trust, L. R. (5 Ch. App.) 182; Alderson v. Maddison, 43 L. T. (N. S.) 349, L. R. (5 Exch. Div.) 293, (7 Q. B. Div.) 174, (8 App. Cas.) 467, 31 Moak 701, 35 Moak 790; 12 Cent. L. J. 98, 15 Cent. L. J. 445; Arthure v. Dillon, 2 Irish Jur. 162; Maunsell v. White, 1 Jones & Lat. 530, 4 H. L. C. 1039; Fitzgerald v. Fitzgerald, 20 Grant's Ch. 410; McCormick v. McRae, 11 U. C. Q. B. 187; Bolman v. Overall (Ala.), 2 South. Rep. 624; Lowe v. Bryant, 30 Ga. 528; Spearman v. Wilson, 44 Ga. 473; Drennan v. Douglas, 102 Ill. 341; Wallace v. Rappelye, 103 Ill. 229, 665; Lee v. Carter, 52 Ind. 342; Frost v. Tarr, 53 Ind. 390; Caviness v. Rushton, 101 Ind. 500; Wilson v. Wilson, 37 Md. 1; Wilkes v. Burns, 60 Md. 64; Shakespeare v. Markham, 10 Hun, 311, 72 N. Y. 400; Dana v. Wright, 23 Hun, 29; Sherman v. Scott, 27 Hun, 331; Eagan v. Kergill, 1 Dem. 464; Mut. Life Ins. Co. v. Holloday, 13 Abb. N. C. 16; Neal v. Gilmore, 79 Pa. St. 421; Taylor v. Mitchell, 87 Pa. St. 518; Cottrell's Estate, 11 Phila. 93; Berkey v. Auman, 91 Pa. St. 481; McKeegan v. O'Neill, 22 S. C. 454. See Quinland v. Quinland, Hay. & Jones, 785; McGuire v. McGuire, 11 Bush, 142; Stanton v. Miller, 14 Hun, 383, 79 N. Y. 620; East v. Dolihite, 72 N. C. 562; Meck's Appeal, 97 Pa. St. 313; Wall's Appeal, 111 Pa. St. 460; Dashwood v. Jermyn, L. R. (12 Ch. Div. 776.

Whether the statute of frauds applies to such a contract by parol for a devise, see Caton v. Caton, L. R. (2 H. of L.) 127; Coles v. Pilkington, L. R. (19 Eq.) 174; Stafford v. Bartholomew, 2 Ind. 153; Wallace v. Long, 105 Ind. 522; Mauck v. Melton, 64 Ind. 414; Stern v. Nysonger, 69 Iowa, 512; Segars v. Segars, 71 Me. 530; Semmes v. Worthington, 38 Md. 298; Berge v. Hiatt, 82 Ky. 666; Gould v. Mansfield, 103 Mass. 408; Wellington v. Apthorp (Mass.), Sept. 1887, 36 Alb. L. J. 357, 13 N. E. Rep. 10; De Moss v. Robinson, 46 Mich. 62; Harder v. Harder, 2 Sandf. Ch. 17; Bender v. Bender, 37 Pa. St. 419; Campbell v. Taul, 5 Yerg. 548.

JOHN H. STEWART.

WEEKLY DIGEST

Of ALL the Current Opinions of all the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States.

1. ADVERSE POSSESSION—Limitation of Actions.——When one has been in possession of land, claiming to a hedge, which he believed to be his true boundary line, such possession is not adverse, and the statute of limitations does not apply.—*Mills v. Penny*, S. C. Iowa, March 10, 1888; 37 N. W. Rep. 135.

2. ALTERATION—Instruments—Stranger.——An interlineation by a stranger of the words "or bearer" after the name of the payee does not affect the rights or liabilities of the parties.—*Andrews v. Calloway*, S. C. Ark., March 31, 1888; 7 S. W. Rep. 449.

3. APPEAL—Abstract—Statement.—— When the abstract on appeal does not show that an appeal was taken, the appeal must be dismissed.—*Names v. Names*, S. C. Iowa, March 12, 1888; 37 N. W. Rep. 163.

4. APPEAL—Amending Case.——After a case has been settled, signed and attested, neither the judge of the district court nor the supreme court can amend it or add to it.—*Graham v. Shaw*, S. C. Kan., March 10, 1888; 17 Pac. Rep. 332.

5. APPEAL—Bond—Time.——When the appeal bond is filed after the time allowed by the record by consent of plaintiff's counsel, the appeal cannot be heard, though the record says the bond was given according to law, when such entry does not appear to have been made by order of court.—*Bowen v. Fox*, S. C. N. Car., March 12, 1888; 5 S. E. Rep. 437.

6. APPEAL—Certified Questions of Law.——When defendant introduced no evidence to support his counterclaim, admitted plaintiff's claim, and a verdict for plaintiff was given by direction of the court, a certificate on appeal, containing questions as to the validity of the contract on which the counterclaim was based, will not be considered,—*Parker v. Michaels*, S. C. Iowa, March 12, 1888; 37 N. W. Rep. 161.

7. APPEAL—Confession — Ejectment. —— An appeal will not lie from a judgment by confession in an amicable action of ejectment.—*Appeal of Swartz*, S. C. Penn., March 12, 1888; 13 Atl. Rep. 69.

8. APPEAL—Defective Abstract.—— In an equitable case on appeal the appellee filed an additional abstract, denying that plaintiff's abstract contained all the evidence. The appellant filed an amendment to his abstract, but did not deny appellee's allegation: *Held*, that the case must be dismissed, it not appearing that all the evidence was before the court.—*Hunter v. City of Des Moines*, S. C. Iowa, March 12, 1888; 37 N. W. Rep. 163.

9. APPEAL—Docketing — Dismissal. —— When both parties appeal from a decision of the court of claims, dismissing both petition and counterclaim, and the plaintiff fails to docket his appeal during the return term, it will be dismissed for want of prosecution.—*U. S. v. Burchard*, U. S. S. C., March 19, 1888; 8 S. C. Rep. 832.

10. APPEAL—Jurisdictional Amount.——A sued B for $150, and recovered a verdict for $135. He afterwards filed an amended petition, claiming $99.99, and obtained a judgment therefor: *Held*, that B could not appeal, no questions of law being certified.—*Wilson v. Hawkeye I. Co.*, S. C. Iowa, March 12, 1888; 37 N. W. Rep. 162.

11. APPEAL—Objections not Raised.——Objections to the judge's charge will not be considered on appeal when no exception was taken nor filed, none pointed out in the motion for a new trial and none taken to the overruling of that motion.—*Lewis v. Lewis*, S. C. Iowa, March 12, 1888; 37 N. W. Rep. 166.

12. APPEAL—Practice.——Where a verdict was rendered for the plaintiff for the precise sum which the defendant had paid into court, the court rendered judgment for the plaintiff; upon writ of error the judgment was reversed and ordered to be rendered for the defendant: *Held*, that the appeal of the plaintiff from this latter judgment should not be dismissed.—*Sentman v. Gamble*, Md. Ct. App., March 14, 1888; 13 Atl. Rep. 58.

13. APPEAL—Review—Findings of Court.——Findings of a court cannot, on appeal, be set aside if there is evidence on which they can be sustained.— *Warfield v. Warfield*, S. C. Iowa, March 10, 1888; 37 N. W. Rep. 144.

14. APPEAL—Second—Dismissal.——When an appeal is dismissed without a provision that it is without prejudice to another appeal, a subsequent appeal, involving the same judgment and order, must be dismissed, under Montana law.—*Owsley v. Warfield*, S. C. Mont., Jan. 7, 1888; 17 Pac. Rep. 74.

15. APPEAL—Weight of Evidence.——When the evidence is conflicting the verdict will not be disturbed on appeal.—*Dickens v. City of Des Moines*, S. C. Iowa, March 12, 1888; 37 N. W. Rep. 165.

16. ARMY AND NAVY—Retirement—Antedating Transfer.——When the president transfers a retired naval officer from the furlough to the retired pay list, he may antedate the transfer, so as to make it relate back to the date of the officer's retirement —*U. S. v. Burchard*, U. S. S. C., March 19, 1888; 8 S. C. Rep. 832.

17. ARMY AND NAVY—Retirement—Salary. — A naval officer was retired on furlough pay, the board finding that his incapacity did not originate in the line of duty. Subsequently the officer was transferred from the furlough to the retired pay list: *Held*, that after such transfer he was not entitled to three-quarters sea pay. —*Potts v. U. S.*, U. S. S. C., March 19, 1888; 8 S. C. Rep. 830.

18. ASSAULT AND BATTERY—Highways—Traveler.—— In an action for assault and battery, defendant may show that he turned out of a highway, where it was impassable, on to the adjacent land, where plaintiff attacked him, and while defending himself he committed the assault.—*Irwin v. Yeager*, S. C. Iowa, March 10, 1888; 37 N. W. Rep. 136.

19. ASSIGNMENT—State— Claim Against State—Sale.—Circumstances stated under which it was held that an assignment of a claim against the State was a sale.—*Sweet v. Merry*, N. Y. Ct. App.. April 10, 1888; 16 N. E. Rep. 63.

20. ATTACHMENT—Irregularities—Practice.—— When a defendant moves to set aside an attachment for irregularity and improvidence, it is error for the court to vacate it on the merits of the case then pending.—*Baum v. Bell*, S. C. S. Car., March 5, 1888; 5 S. E. Rep. 485.

21. ATTORNEYS — Partners — Retainers.—— If attorneys, who are partners, accept a retainer, the contract is joint, and continues to the termination of the suit.—*Tomlinson v. Polsley*, S. C. App. W. Va., Feb. 25, 1888; 5 S. E. Rep. 457.

22. BANKS — Cashier — Statute. —— The statute of Pennsylvania which prohibits cashiers of banks from engaging in any other business does not apply to cashiers of national banks.—*Appeal of Allen*, S. C. Penn., March 12, 1888; 13 Atl. Rep. 70.

23. BILLS AND NOTES—Holder—Presumption.——The holder of a negotiable instrument, payable to the order of the maker and indorsed by him in blank, is presumed to be a holder for value before maturity and without notice of equities.—*Cochrane v. Dickinson*, S. C. La., Feb. 13, 1888; 3 South. Rep. 841.

24. BOND—Forthcoming—Lien.——A forfeited forthcoming bond is a lien on the land of the obligor's from the time the bond was returned to the clerk's office.—*Cabell v. Given*, S. C. App. W. Va., Feb. 11, 1888; 5 S. E. Rep. 442.

25. COLLISION—Negligence— Contributory Negligence —Jury.——Circumstances stated under which it was held that it was a question for the jury whether it was contributory negligence in the master of a schooner at anchor in a cove not to have an anchor watch on duty during the night.—*Chappell v. Bradshaw*, Md. Ct. App., March 14, 1888; 13 Atl. Rep. 50.

26. CONTRACT—Accounting — Insurance. —— Where, by a contract, a crop was cultivated on shares between plaintiff and defendant, and was burned while in defendant's possession, plaintiff is entitled to an accounting for any insurance thereon obtained by defendant.—*Humes v. Dottermus*, S. C. Penn., March 19, 1888; 13 Atl. Rep. 78.

27. CONTRACT—Assignment.——It is no defense to an action on contract for services that the claim has been assigned.—*Coulter v. Haynes*, S. J. C. Mass., March 19, 1888; 16 N. E. Rep. 19, 5 N. Eng. Rep. 894.

28. CONTRACT—Condition Precedent.—— Where, by a contract, the work was to be paid for within ten days after the chief engineer had certified to the correctness of the account, such condition is a condition precedent to the party's right of action, and it may be pleaded in bar of such action that the engineer's certificate had not been asked for nor furnished.—*Byron v. Low*, N. Y. Ct. App., April 10, 1888; 16 N. E. Rep. 45.

29. CONTRACT—Conditional Sale—Revocation. —— Two parties agreed to pool their interests in a corporation and to buy a controlling interest therein, each to have an equal interest and to pay equally. Afterwards, to equalize their interest, A took B's note for the difference, agreeing to transfer certain shares to B on the payment of his note: *Held*, that the first agreement was rescinded by the latter, and unless B paid his note at maturity he lost all interest in the shares A agreed to convey to him.—*Davison v. Davis*, U. S. S. C., March 19, 1888; 8 S. C. Rep. 825.

30. CONTRACT—Evidence.——Where the demand of a plaintiff for the performance of a contract by the defendant is dependent upon the payment to the latter of a sum of money, it is not competent for plaintiff to prove that in lieu of such payment or tender of the money he had offered a mortgage of personal property, and evidence to that effect was properly rejected.—*Stanley v. Thomas*, Md. Ct. App., March 14, 1888; 13 Atl. Atl. Rep. 53.

31. CONTRACT—Measure of Damages.——The measure of damages for supplying, under a contract, defective parcels of milk-coolers, is the cost of replacing such parcels with perfect ones.—*New York, etc. Co. v. Remington*, N. Y. Ct. App., April 10, 1888; 16 N. E. Rep. 48.

32. CONTRACTS—Reservation of Title—Advances.—— By parol contract a warehouse association advanced money to A to buy tobacco to be shipped to them and profits to be divided, and it was agreed that the title to the tobacco, while in A's hands, should be in the association: *Held*, that the association could replevy tobacco in A's hands at his death as against A's creditors, though A died insolvent.—*Grange W. Assn. v. Owen*, S. C. Tenn., 1888; 7 S. W. Rep. 457.

33. CORPORATION—Transfer of Stock.——Where the president of a corporation sells his stock and gives a certificate to the purchaser and notifies the directors but the transfer is not entered on the transfer book, the purchaser is the equitable owner of the stock against judgment creditors of the president.—*Telford, etc. Co. v. Gerhab*, S. C. Penn., March 19, 1888; 13 Atl. Rep. 90.

34. COSTS—Criminal Cases.——The provision about payment by the State in certain criminal cases of the costs, as contained in the constitution, refers to all costs therein, and witnesses of a discharged defendant, who has not taken the oath of insolvency, should be paid by the State.—*Buckman v. Alexander*, S. C. Fla., Feb. 18, 1888; 3 South. Rep. 817.

35. COUNTIES—Bridges—Liability.——Counties are required, in Iowa, to build all bridges needed on public roads, and their liability for damages caused by a defective bridge does not depend upon the size of the bridge.—*Casey v. Tama Co.*, S. C. Iowa, March 10, 1888; 37 N. W. Rep. 138.

36. COUNTIES—Highways—Negligence—Statute.——A county is not liable in damages for the negligence of persons in charge of highways or injuries resulting therefrom, unless that liability is imposed on the county by statute.—*Abbett v. Johnson County*, S. C. Ind., March 20, 1888; 16 N. E. Rep. 127.

37. COUPONS—Sale—License.——The act prohibiting the sale of tax receivable coupons from bonds of the State of Virginia without a special license is constitutional.—*Com. v. Larkin*, S. C. App. Va., Feb. 16, 1888; 5 S. E. Rep. 526.

38. CRIMINAL LAW—Arson—Corn Crib.——The Alabama act concerning the burning of a corn pen containing corn, includes the burning of a corn crib containing corn.—*Cook v. State*, S. C. Ala., Feb. 24, 1888; 3 South. Rep. 849.

39. CRIMINAL LAW — Bribery—Statute.——Construction of the statutes of New York relating to the subject of bribery and those consolidating the local laws of the city of New York.—*People v. O'Neill*, N. Y. Ct. App., April 10, 1888; 16 N. E. Rep. 68.

40. CRIMINAL LAW — Circumstantial Evidence—Sufficiency.——When, in a murder case, the evidence is entirely circumstantial, but tends to show a motive therefor on the part of the defendant, and his presence there when the crime was committed, a verdict of guilty will not be disturbed, the evidence not being so insufficient as to show passion or prejudice on the part of the jury.—*State v. Rainsbarger*, S. C. Iowa, March 10, 1888; 37 N. W. Rep. 153.

41. CRIMINAL LAW—Homicide—Proof of Venue.—— The positive testimony of one witness, that the killing occurred in the trial county, when not positively contradicted, will sustain such a finding.—*Speight v. State*, S. C. Ga., March 28, 1888; 5 S. E. Rep. 506.

42. CRIMINAL LAW—Indictment—Variance.——An indictment for perjury charged that it was committed in a trial before a justice between defendant and another. It appeared that the summons was issued against two, but before trial the case was dismissed by plaintiff as to one, but it did not appear that such order was entered before trial: *Held*, that the question of the existence of a variance was properly submitted to the jury.—*State v. Green*, S. C. N. Car., March 12, 1888; 5 S. E. Rep. 422.

43. CRIMINAL LAW—Name—Recalling Witness.——A demurrer, that one cannot be indicted by the initial only of his Christian name, should be overruled. After defendant's counsel has closed his argument, the court may allow a witness to be recalled and examined.—*Wiggins v. State*, S. C. Ga., March 28, 1888; 5 S. E. Rep. 503.

44. CRIMINAL LAW—Perjury—Continuance.——A defendant, in a criminal case, is guilty of perjury if, in an affidavit for a continuance, he falsely swears that a certain person is the only witness by whom he can prove an *alibi*.—*Sanders v. People*, S. C. Ill., March 27, 1888; 16 N. E. Rep. 81.

45. CRIMINAL LAW—Self-defense—Instructions.——A charge, that to make out a case of justifiable self-defense the evidence must show that the difficulty was not provoked or encouraged by the defendant, is erroneous in misplacing the burden of proof.—*Brown v. State*, S. C. Ala., Feb. 28, 1888; 3 South. Rep. 857.

46. CRIMINAL LAW—Shooting—Lying in Wait.——Under an indictment for shooting with intent to murder, lying in wait, the defendant may be convicted of shooting with intent to murder.—*State v. Evans*, S. C. La., March 5, 1888; 3 South. Rep. 838.

47. CRIMINAL LAW—Statute.——Circumstances stated under which a person inducing another to leave the State was held guilty of a crime described in 3 Rev. Stat. N. Y., pt. 4, tit. 2, § 28. (Pen. Code, § 211).—*People v. De Leon*, N. Y. Ct. App., April 10, 1888; 16 N. E. Rep. 46.

48. CRIMINAL PRACTICE—Continuance—Affidavit.——When a continuance in a murder case is asked by defendant on account of illness of counsel, the State may file affidavits showing that it had given the defendant written notice it would insist upon a trial, and that defendant has other counsel in the case.—*State v. Rainsbarger*, S. C. Iowa, March 10, 1888; 37 N. W. Rep. 153.

49. CUSTOMS DUTIES — False Invoices—Proceedings.——Under the United States laws, the forfeiture of the goods tried to be entered under a false invoice may be enforced as a proceeding *in rem*, independent of the criminal prosecution provided for.—*Origet v. U. S.*, U. S. S. C., March 19, 1888; 8 S. C. Rep. 846.

50. CUSTOMS DUTIES—Forfeiture—Informations.——Informations for seizure for forfeiture for violations of the customs revenue laws, are civil proceedings *in rem* and controlled by Rev. Stat. U. S., § 954.—*Friedenstein v. U. S.*, U. S. S. C., March 19, 1888; 8 S. C. Rep. 838.

51. DEPOSITIONS — Examination of Adversary—Practice—Statute.——Construction of New York statutes relative to the taking of depositions and the examination of parties as witnesses.—*Herbage v. City of Utica*, N. Y. Ct. App., April 10, 1888; 16 N. E. Rep. 62.

52. DEPOSITIONS—Inclosures with.——Bills of sale inclosed with a deposition, but not described in it, and having on them no marks of identification, cannot be admitted in evidence as a part thereof.—*Appel v. Crane*, S. C. Ala., March 1, 1888; 3 South. Rep. 863.

53. DESCENT AND DISTRIBUTION—Half Blood—Homestead.——The Alabama law giving preference to the whole over the half blood, does not exclude the children of the wife by a former marriage from sharing in a homestead allotted to her out of the estate of a subsequent husband upon her death intestate.—*Eatman v. Eatman*, S. C. Ala., Feb. 28, 1888; 3 South. Rep. 850.

54. DESCENT AND DISTRIBUTION — Trust — Will.——Where, by his will, a testator provides a fund for the support of his son for life, and directs that upon his death the fund remaining shall go to his "heirs at law:" *Held*, that by these words the testator did not mean technical "heirs at law," but meant the distributees of his son, including his widow.—*White v. Stanfield*, S. J. C. Mass., March 5, 1888; 15 N. E. Rep. 919; 5 N. Eng. Rep. 56.

55. DRAINAGE — Assessment — Statute.——Construction of Illinois statutes with reference to drainage and assessment under drainage laws.—*People v. Myers*, S. C. Ill., March 28, 1888; 16 N. E. Rep. 89.

56. EASEMENT—Burden of Proof.——The burden of proof that a private way over land was held by license and not by adverse claim, is upon the owner of the land. —*Wanger v. Hipple*, S. C. Penn., March 19, 1888; 13 Atl. Rep. 81.

57. ELECTIONS — Canvassing Board — Authority.——When the election returns are regular in form and genuine, the canvassing board has no authority to determine whether illegal votes have been included therein.—*Brown v. Board of Co. Commrs.*, S. C. Kan., Feb. 13, 1888; 17 Pac. Rep. 304.

58. EMINENT DOMAIN—Action — Executor.——Under the laws of Pennsylvania, a right of action accrues for private property taken for public uses at the time of such taking, and an executor may institute such an action, although the public work in question was not completed at his testator's death.—*O'Brien v. Pennsylvania, etc. Co.*, S. C. Penn., March 12, 1888; 13 Atl. Rep. 74.

59. EMINENT DOMAIN—Compensation—Damages.——Where two lots are divided only by a surveyor's line, they must be considered as one property in assessing damages under the right of eminent domain, and the proximity of a railroad station may be considered in assessing benefits and damages.—*Baltimore, etc. Co. v. Springer*, S. C. Penn., March 12, 1888; 13 Atl. Rep. 76.

60. EMINENT DOMAIN—Municipal Corporations—Constitutional Law.——When a city constructs a viaduct along streets so that access to a lot is practically cut off from one street, and the use of another as a way of approach or exist is seriously impaired and the lot is often flooded, the lot is damaged and the owner is, under the Illinois constitution, entitled to compensation.—*City of Chicago v. Taylor*, U. S. S. C., March 19, 1888; 8 S. C. Rep. 820.

61. EMINENT DOMAIN—Municipal Corporation — Damages.——Under the statutes of Illinois, which authorize the taking lands for public streets and provide compensation to be assessed by a jury, it is competent for the jury to take into consideration the benefit accruing to that portion of the proprietor's land which is not taken for the street.—*Harwood v. City of Bloomington*, S. C. Ill., March 28, 1888; 16 N. E. Rep. 91.

62. EMINENT DOMAIN—Statute — Appeal — Cost.——Construction of Pennsylvania statutes relative to the appropriation of land by eminent domain, appeal from report of viewers and cost incident thereto.—*Appeal of Perry*, S. C. Penn., March 5, 1888; 13 Atl. Rep. 66.

63. EMINENT DOMAIN—Territories—Constitutional Law.——The act of the Territory of Colorado, providing that all mining claims now or hereafter located shall be subject to the right of way of any tramway now in use, or which may be hereafter located, is abrogated so far as it is in violation of Colo. Const., art. 2, § 14.—*People v. District Court*, S. Colo., March 9, 1888; 17 Pac. Rep. 298.

64. EQUITY—Jurisdiction—Accounting.——In an action to construe certain bills of sale and for foreclosure thereof as mortgages, equity will settle the entire accounts between the parties.—*Paul v. Land*, S. C. Oreg., Nov. 25, 1887; 17 Pac. Rep. 81.

65. EQUITY—Jurisdiction—Conveyance.——Plaintiffs alleged that, in a suit against the defendants, they were adjudged to own a part of a mining claim, and that since that the defendants had obtained a patent for the claim and refused to convey to plaintiffs their portion: *Held*, that a case for equitable relief was stated.—*Bassick M. Co. v. Davis*, S. C. Colo., March 9, 1888; 17 Pac. Rep. 294.

66. EQUITY—Mistake of Law.——When all parties suppose a deed gives a creditor, who takes the land in payment an unincumbered title in fee, when in reality a homestead is reserved, equity will correct the mistake in law when the proof is full and clear.—*Kornegay v. Everett*, S. C. N. Car., March 13, 1888; 5 S. E. Rep. 418.

67. ERROR—Writ of—Case Made—Service.——When the record does not show that the case was served at any time on the opposing party, or within what time it should be served, nor that service was waived, nor that any amendments were suggested thereto, the alleged errors cannot be considered.—*Burlington, etc. R. Co. v. Gillen*, S. C. Kan., March 10, 1888; 17 Pac. Rep. 334.

68. EVIDENCE—Confessions.——Confessions should not be introduced till they are first proved to have been voluntary, and the defendant, before their admission, should be allowed to introduce evidence to show that they were not voluntary.—*Jackson v. State*, S. C. Ala., Feb. 28, 1888; 3 South. Rep. 847.

69. EVIDENCE—Expert— Hypothetical Case.——In a murder case, evidence of a physician as to the probable cause of death, in answer to a hypothetical question based on facts to be determined by the jury, is incompetent.—*State v. Rainsbarger*, S. C. Iowa, March 10, 1888; 37 N. W. Rep. 153.

70. EVIDENCE — Records — Authentication. —— In Georgia, letters testamentary, purporting to have been issued by a court of ordinary, should not be rejected because it is not proved they were signed by the clerk or his ordinary.—*Ponder v. Shumans*, S. C. Ga., March 26, 1888; 5 S. E. Rep. 502.

71. EXECUTION—Third Person—Levy. —— One upon whose property an execution against another person has been levied has his remedy at law. He cannot move to have the execution set aside.—*State v. Borden*, S. C. N. J., June Term, 1887; 13 Atl. Rep. 42.

72. EXECUTORS—Paying Debts—Credits. —— An administrator of two different estates may pay the debt of one to the other by transferring assets in his hands from one estate to the other.—*Green v. Thompson*, S. C. App. Va., Jan. 20, 1888; 5 S. E. Rep. 507.

73. EXECUTORS—Widow's Support—Death.—— When a judgment, reversing the setting apart of the widow's yearly support is sustained on appeal after her death, her administrator may ask for such setting apart without waiting for the court's *remittitur*.—*Brown v. Joiner*, S. C. Ga., March 21, 1888; 5 S. E. Rep. 497.

74. FRAUD—Execution.——For an execution creditor to agree with his debtor after a levy on goods that the latter may sell by retail for cash, and that the creditor will take his chances for the money, such agreement is fraudulent in law, and postpones the creditor to the lien of subsequent execution.—*Appeal of Larzelere Co.*, S. C. Penn., March 19, 1888; 13 Atl. Rep. 85.

75. FRAUDULENT CONVEYANCES— State — Action.—— The State can maintain a suit to set aside a fraudulent conveyance and subject the land of a defendant to the payment of a judgment for a fine for illegally selling liquors.—*State v. Burkenolder*, S. C. App. W. Va., Jan. 28, 1888; 5 S. E. Rep. 439.

76. FRAUDULENT CONVEYANCES—Purchasing Grantor's Debts.——A deeded his land to B, under an agreement that B was to buy up A's debts at a discount and divide the profits received between A and B: *Held*, fraudulent as to A's creditors.—*Rucker v. Moss*, S. C. App. Va., March 15, 1888; 5 S. E. Rep. 527.

77. GAMING—Bet—Stockholder.——In a suit against a stockholder of money put up on a bet, when the evidence is conflicting whether the money was demanded from him, and whether such demand was made before he paid the money over, these questions should be submitted to the jury.—*Myers v. Colson*, S. C. Ga., March 28, 1888; 5 S. E. Rep. 504.

78. GARNISHMENT—Partnership—Transfer of Interest. ——When a partner buys out his partner while a suit against the latter is pending, of which he has knowledge, and he is subsequently garnished on the judgment obtained, the court errs in authorizing the jury to find a verdict for the plaintiff without requiring them to find that the partnership had been dissolved and finally settled.—*Birtwhistle v. Woodward*, S. C. Mo., March 19, 1888; 7 S. W. Rep. 465.

79. GARNISHMENT — Proceedings in Another State.—— A, a resident of Alabama, was sued in Tennessee on personal service. His debtor, a railroad, was garnished there for a debt due A for services rendered in Alabama: *Held*, that the payment of a judgment by the debtor was a defense to a suit against him by A in Alabama for that debt.—*East Tennessee, etc. R. Co. v. Kennedy*, S. C. Ala., Feb. 28, 1888; 3 South. Rep. 852.

80. HIGHWAYS — Eminent Domain — Appeal. —— On appeal from an award of damages in laying out a public road, the only question is the amount of damages due the appellant.—*Briggs v. Labette Co.*, S. C. Kan., March 10, 1888; 17 Pac. Rep. 331.

81. HIGHWAYS — Laches. —— Circumstances stated under which a party applying for a review of the report of viewers of a highway is guilty of laches.—*In re Road in Cheltenham County*, S. C. Penn., March 19, 1888; 13 Atl. Rep. 93.

82. HIGHWAYS—Township — Advances. —— Where a road superintendent sues a township for advances made by him for the repair of highways, he sufficiently accounts in his complaint for the money received by him from the county by stating that such money was expended on the highway and was duly accounted for to the proper county officers.—*Clark v. Brookshire*, S. C. Ind., March 20, 1888; 16 N. E. Rep. 132.

83. HUSBAND AND WIFE—Fraudulent Conveyance.—— A conveyance by a husband of all his property to his wife on condition that she support him for life and pay certain debts, the property exceeding in value largely the amount of those debts, is void as to the unsecured creditors.—*Park v. Batty*, S. C. Ga., Jan. 20, 1888; 5 S. E. Rep. 492.

84. HOMESTEAD — Minor Children— Subsequent Marriage.——A homestead set apart to defendant in execution, as head of a family of minor children, in case of his marriage before they are of age, continues in favor of his wife, and is not subject to execution for his debt.—*Dismuke v. Eady*, S. C. Ga., Feb. 13, 1888; 5 S. E. Rep. 494.

85. HUSBAND AND WIFE—Mortgage to Wife — Consideration.——A note given by a wife for a barred debt of her husband will support a mortgage by him to her against creditors, though she does not pay the debt.—*McAfee v. McAfee*, S. C. S. Car., March 5, 1888; 5 S. E. Rep. 480.

86. HUSBAND AND WIFE—Separate Estate—Trustee.— When one borrows money for a married woman, and signs his name to a note therefor, as trustee, when he is not her trustee, and the money is used to pay the purchase money notes of her separate estate, such estate is not liable therefor, though she requested him to borrow the money for that purpose.—*Seborn v. Beckwith*, S. C. App. W. Va., Feb. 11, 1888; 5 S. E. Rep. 450.

87. HUSBAND AND WIFE—Partnership—Creditor.—— A wife who permits her husband to manage her property and use her money in the business of a firm of which he is a member, and the firm fails, is not a creditor thereof, nor entitled to a dividend.—*Jenkins v. Middleton*, Md. Ct. App., March 15, 1888; 13 Atl. Rep. 155.

88. HUSBAND AND WIFE—Vested Interest. —— Const. Ark. 1868, and act of 1873, relating to the separate property of married women, do not affect the interest acquired by a husband in his wife's real estate prior to their adoption.—*Erwin v. Puryear*, S. C. Ark., March 31, 1888; 7 S. W. Rep. 449.

89. INJUNCTION—Appeal—Practice.——An order of a trial court dissolving an injunction will not be reviewed upon appeal.—*Appeal of Barrett*, S. C. Penn., March 12, 1888; 13 Atl. Rep. 72.

90. INJUNCTION—County Commissioners.——County commissioners cannot be restrained by injunction from acting officially, unless it appears that they are proceeding without lawful authority.—*Appeal of Delaware County*, S. C. Penn., March 5, 1888; 13 Atl. Rep. 62.

91. INJUNCTION—Sanction—Order.——A bill for an injunction is sufficiently sanctioned, under Georgia law, by an order on defendants to show cause.—*Alspaugh v. Adams*, S. C. Ga., Feb. 24, 1888; 5 S. E. Rep. 496.

92. INSANITY—Expert—Fees.——The fees of experts for testimony in a criminal proceeding given at the instance of the relator, who was afterwards adjudged insane, will not be allowed as against his estate.—*In re Streeper's Estate*, S. C. Penn., March 12, 1888; 13 Atl. Rep. 72.

93. INSOLVENCY—Assignment—Promissory Note.—— The assignee of an insolvent may sue for the amount of a promissory note which has been fraudulently transferred by his assignor, although he has not that note in his possession.—*Cooper v. Perdue*, S. C. Ind., March 21, 1888; 16 N. E. Rep. 140.

94. INSOLVENCY—Judgment.——A judgment creditor

who has assigned his debt may proceed in insolvency against the debtor and make the necessary oaths for the benefit of his assignee.—*American, etc. Co. v. Chipman*, S. J. C. Mass., March 5, 1888; 16 N. E. Rep. 47; 6 N. Eng. Rep. 47.

95. INSURANCE—Risk—Increase of Risk.——Where a policy of insurance on a mill contained a stipulation, that it should be void if the risk was increased without the consent of the insurer, the question, whether a change of machinery increased the risk, is a question for the jury.—*North British, etc. Co. v. Steiger*, S. C. Ill., March 28, 1888; 16 N. E. Rep. 95.

96. INTERSTATE COMMERCE — Unconstitutional Law—Appeal.——The license imposed by act of December 11, 1886, on itinerant dealers in fruit trees, so far as it applies to agents selling goods by sample for a non-resident principal, is unconstitutional. When the record shows that the court held the law, under which the indictment was found, to be constitutional, an appeal is allowed the State, under Alabama laws.—*State v. Agee*, S. C. Ala., Feb. 28, 1888; 3 South. Rep. 856.

97. INTOXICATING LIQUORS—License — Municipal Corporations.——Authority given to a municipal corporation to license the sale of beer, will not authorize it to prohibit the sale of beer by the quart.—*State v. Garon*, S. C. N. J., Feb. 27, 1888; 13 Atl. Rep. 26.

98. INTOXICATING LIQUORS — Pleadings — Charging Property.——A petition by a wife, to charge property for damages from the sale of intoxicating liquors to her husband, need not allege, under Iowa law, that the owner thereof knew of such sale.—*Judge v. Flournoy*, S. C. Iowa, March 10, 1888; 37 N. W. Rep. 130.

99. INTOXICATING LIQUORS — Probate Judge — Mandamus.——Act of Leg. Ala. 1886-7, p. 671, relative to sale of intoxicating liquors in Calhoun county, is constitutional. A *mandamus* will not lie to compel a probate judge, who has refused a license to sell liquor, under act Ala. Feb. 17, 1885, to issue such license.—*Ramagnano v. Crook*, S. C. Ala., March 1, 1888; 3 South. Rep. 845.

100. INTOXICATING LIQUORS—Removal of Causes.——An action, under Iowa law, asking that a saloon be declared a nuisance and abated and defendant be enjoined from selling liquor, cannot be removed to the federal court on the allegation that it would deprive defendant of his property and rights without compensation.—*Shear v. Bolinger*, S. C. Iowa, March 12, 1888; 37 N. W. Rep. 164.

101. JUDGE—Death—Argument on Appeal.——When a cause, on appeal, is argued before two judges, the other being disqualified, and one afterwards dies, the survivor and the successor of the deceased constitute a court to decide the cause.—*Hardin v. Lovelace*, S. C. Ga., June 14, 1887; 5 S. E. Rep. 493.

102. JUDGMENT — Appeal — New Trial.——Where a judgment has been rendered and defendant has moved for a new trial, and his motion is denied, he must appeal, if at all, within ten days after the rendition of the judgment, not after the overruling of the motion for a new trial.—*State v. District Court*, S. C. N. J., June Term, 1887; 13 Atl. Rep. 43.

103. JURISDICTION—Foreign Company—Railroad.——When a foreign railroad regularly runs its trains into a certain county, receiving and discharging passengers at a union depot, having arrangements to run its cars over the tracks of railroads in the county, it may be sued in such county for injuries to persons or property on its road, under Kansas law.—*Hannibal, etc. R. Co. v. Kanaley*, S. C. Kan., March 10, 1888; 17 Pac. Rep. 324.

104. JUSTICES OF THE PEACE—Jurisdiction—Waiver.——Where no objection to the jurisdiction of a justice of the peace is raised before the justice, nor before the county court on appeal, it cannot be raised in the supreme court.—*Hardenbrook v. Harrison*, S. C. Colo., Jan. 27, 1888; 17 Pac. Rep. 72.

105. LASCIVIOUS COHABITATION—Proof.——Under the act of congress of March 22, 1882, cohabitation with a woman to whom the defendant has been legally married, is proved by showing that she lives in the vicinity and bears his name; that he contributes to her support and visits her.—*U. S. v. Harris*, S. C. Utah, Feb. 2, 1888; 17 Pac. Rep. 75.

106. LEASE—Default—Forfeiture.——The provision in a lease, that if rent remains unpaid for sixty days after maturity the premises shall revert to the lessor, does not of itself operate in that case a forfeiture of the lease.—*Smith v. Miller*, S. C. N. J., June Term, 1888; 13 Atl. Rep. 39.

107. LEASE—Insurance—Contract.——Where, by the terms of a lease, the lessee is bound to keep the premises insured, and procures insurance, intending to observe the terms of the lease but fails to do so, equity will release him from any forfeiture incurred.—*Mactier v. Osborn*, S. J. C. Mass., March 3, 1888; 15 N. E. Rep. 641; 5 N. Eng. Rep. 35.

108. LEASE—Landlord and Tenant.——A lease for one year with the privilege of three can be terminated at the expiration of the first or second year at the option of the lessee.—*Gillion v. Finley*, S. C. Penn., March 19, 1888; 13 Atl. Rep. 83.

109. LIEN—Pledge—Priority.——Where the purchaser of personal property gave for it an indorsed note, and promised the indorsers that he would hold the property for their security, but afterwards pledged it to the seller to secure another debt: *Held*, that the seller had a lien superior to any claim of the indorsers.—*Beekman v. Barber*, N. J. Ct. Chan., March 7, 1888; 13 Atl. Rep. 33.

110. LIMITATIONS—Adverse Possession—Escheat.——Where a widow obtained a grant from the State or its interest by escheat in lands of her deceased husband, representing that he left no heirs that could inherit: *Held*, that it was a question for the jury whether, under that grant, she held adversely to his heirs and would be protected by the statute of limitations.—*North Hudson, etc. Co. v. Vanderbeck*, N. J. Ct. Err. & App., June Term, 1887; 13 Atl. Rep. 45.

111. LIMITATIONS — Fraudulent Conveyances—Setting Aside.——The statute will begin to run to set aside a voluntary deed of a deceased debtor as fraudulent, only when the plaintiff has exhausted all legal remedies against the testator's estate and execution is returned *nulla bona*.—*Nat. Bank v. Kinard*, S. C. S. Car., Feb. 18, 1888; 5 S. E. Rep. 464.

112. MALICIOUS PROSECUTION—Probable Cause.——To show want of probable cause for a suit, it is not necessary to show that the suit was instituted through ill-will or hatred to the defendant therein.—*Southwestern R. Co. v. Mitchell*, S. C. Ga., March 19, 1888; 5 S. E. Rep. 490.

113. MANDAMUS — Attachment.——Where, after the issuance of a *mandamus*, an arrangement is made between the petitioner and the city council by which its operation is suspended, the council is not liable to attachment for failing to obey the *mandamus*.—*State v. City of Rahway*, S. C. N. J., Feb. 27, 1888; 13 Atl. Rep. 27.

114. MASTER AND SERVANT—Appliances—Case.——A railroad is only required to exercise reasonable and ordinary care and diligence in furnishing reasonably safe machinery and instrumentalities for the operation of its road in its duty to its employees.—*Hannibal, etc. R. Co. v. Kanaley*, S. C. Kan., March 10, 1888; 17 Pac. Rep. 324.

115. MECHANIC'S LIEN — Filing — Removing Claim.——When a mechanic's lien has been properly filed and abstracted, the subsequent removal of the statement from the file will not destroy the lien nor the constructive notice therefrom.—*Bell v. Teague*, S. C. Ala., March 1, 1888; 3 South. Rep. 861.

116. MASTER AND SERVANT — Notice—Danger.——A master is not responsible for failing to notify his servant that a circular saw is a dangerous machine.—*Delaware, etc. Co. v. Muttall*, S. C. Penn., March 5, 1888; 13 Atl. Rep. 65.

117. MASTER AND SERVANT—Negligence—Fellow servant.——Under Georgia law, an employer is not liable to an employee for injuries caused by the negligence of a coemployee, though the latter was the former's

superior.—*McGovern v. Columbus M. Co.*, S. C. Ga., Feb. 6, 1888; 5 S. E. Rep. 492.

118. MASTER AND SERVANT — Negligence — Unsafe Bridge.——It is not error to exclude evidence about the unsafe condition of a bridge, when the plaintiff, an employee of the bridge, had crossed it daily for two years and knew of its unsafe condition. —*Weld v. Missouri P. R. Co.*, S. C. Kan., March 10, 1888; 17 Pac. Rep. 306.

119. MINES—Tunnels — Adverse.——The owner of a tunnel must adverse mining claims conflicting with his rights.—*Back v. Sierra, etc. Co.*, S. C. Idaho, Feb. 27, 1888; 17 Pac. Rep. 83.

120. MORTGAGE.——Where a father advances a sum of money to his daughter and takes from her a deed to land worth much more than that sum, and states that she will be reimbursed by what will come to her from his estate: *Held*, that as between her and one with notice claiming under her father, her conveyance will be regarded as a mortgage.—*Helm v. Boyd*, S. C. Ill., March 27, 1888; 16 N. E. Rep. 85.

121. MORTGAGE—Deed of Trust—Forgery. —— Under the evidence, the validity of a note and deed of trust sought to be impeached as forgeries sustained.—*Cissel v. Dutch*, U. S. S. C., March 19, 1888; 8 S. C. Rep. 829.

122. MORTGAGE—Foreclosure—Writ of Assistance.—— When a mortgage is foreclosed on an overdue note, another note which becomes due before the decree of foreclosure and sale may be included in the decree if a proper foundation therefor has been laid in the bill. A vendee from a purchaser at such sale should, when his right of possession is clear, be allowed a writ of assistance against the mortgagor in possession, who was a party to the foreclosure suit.—*McLane v. Piaggio*, S. C. Fla., March 7, 1888; 3 South. Rep. 828.

123. MORTGAGE—Settlement—Mistake—Evidence.—— Where a settlement between mortgagor and mortgagee was made when the matter was fresh, it will not be disturbed, in the absence of fraud and upon the clearest evidence of mistake.—*Smeis v. Cresse*, N. J. Ct. Chan., March 6, 1888; 13 Atl. Rep. 23.

124. MORTGAGE—Trustees—Lien. —— When a mortgage provides that the trustees shall receive compensation for their services, such trustees have no lien on the mortgaged property.—*Mercantile, etc. Co. v. Pickerell*, S. C. N. Car., March 5, 1888; 5 S. E. Rep. 417.

125. MUNICIPAL CORPORATIONS.——A descripsion of a sewer made by a city in pursuance of a statute is not imperfect because it omits to state where the manholes are situated.—*City of Springfield v. Mathus*, S. C. Ill., March 28, 1888; 16 N. E. Rep. 92.

126. MUNICIPAL CORPORATIONS—Officers — Removal.—When an officer of a city is removed by vote of its council, but the vote would have been a tie if the mayor's vote had not been ignored as illegal, a writ of *certiorari* should issue, there being no law preventing the mayor from voting.—*Asbell v. Brunswick*, S. C. Ga., March 25, 1888; 5 S. E. Rep. 500.

127. MUNICIPAL CORPORATIONS—Sewers.——The city of Boston is responsible for the cost of sewers built by order of the aldermen with the approval of the mayor. *Dorey v. Boston*, S. J. C. Mass., March 3, 1888; 15 N. E. Rep. 897; 5 N. Eng. Rep. 43.

128. NEGLIGENCE—Contributory — Railroad Crossing. ——When a person approaches a railroad crossing slowly, looking and listening for trains, his view of the road being obstructed, his failure to see an approaching train, or to stop his team to look and listen, is not contributory negligence *per se*.—*Reed v. Chicago, etc. R. Co.*, S. C. Iowa, March 10, 1888; 37 N. W. Rep. 149.

129. NEGLIGENCE — Contributory — Sister State. —— When contributory negligence is clearly proved, a charge relative thereto, under Alabama law, in which State the accident occurred, is immaterial, the law of both States being the same.—*Dickson v. Mobile, etc. R. Co.*, S. C. Ga., Feb. 20, 1888; 5 S. E. Rep. 496.

130. NEGLIGENCE—Contributory Negligence.—— One who goes upon a railroad track without looking to the right and the left is guilty of contributory negligence, and if he is killed by a passing train his administrator cannot recover damages.—*Hamilton v. Delaware, etc. Co.*, S. C. N. J., Feb. 27, 1888; 13 Atl. Rep. 29.

131. NEGLIGENCE—Master and Servant.——A railroad company is not liable for the death of a brakeman killed while attempting to couple a car which he knew to be unsafe.—*Barkdoll v. Pennsylvania, etc. Co.*, S. C. Penn., March 19, 1888; 13 Atl. Rep. 82.

132. NEGLIGENCE—Street Railway.——Where a street railway car is running at high speed, and by a collision with a truck wagon a passenger is injured, a nonsuit will not be ordered on the ground that the car driver was not guilty of negligence.—*Hill v. Ninth Ave., etc. Co.*, N. Y. Ct. App., April 10, 1888; 16 N. E. Rep. 61.

133. NEGLIGENCE — Turnpike Company.——A turnpike company which, by its negligence, permits its road to become unsafe for a person exercising ordinary care, is liable in damages to such person as may be injured in person or property while exercising that degree of care.—*Baltimore, etc. Co. v. Bateman*, Md. Ct. App., March 14, 1888; 13 Atl. Rep. 54.

134. NEGOTIABLE PAPER—Protest — Jury. —— When, on a demand note an accommodation indorser is bound, and the note is not protested for eight months, it is a question to be submitted to the jury whether there was an agreement at the time the note was made, to which the indorser was a party, that payment would not be pressed for if interest was paid every six months.—*Jones v. Jenkintown, etc. Co.*, S. C. Penn., March 19, 1888; 13 Atl. Rep. 84.

135. NEGOTIABLE INSTRUMENT—Usury. —— One who sells a promissory note and indorses it "without recourse," is liable for a deficiency in the recovery, because the amount of the note was partly usurious.—*Drennan v. Bunn*, S. C. Ill., March 28, 1888; 16 N. E. Rep. 100.

136. NUISANCE—Measure of Damages.—— The measure of damages for a temporary nuisance, rendering a house valueless, in the depreciation of rental value of the house from the establishment of the nuisance to the commencement of the suit.—*Shively v. Cedar Rapids, etc. Co.*, S. C. Iowa, March 10, 1888; 37 N. W. Rep. 133.

137. OFFICE—Term.——Where the law does not fix the beginning of the term of office, it will be held to begin at the time of the election or appointment or at the time the incumbent assumes the office.—*State v. Duffield*, S. C. N. J., March 2, 1888; 13 Atl. Rep. 30.

138. OFFICE—Term—Abolition. —— The abolition of the office of county judge of Marshall county did not deprive the incumbent of office for the remainder of his term, under the constitution of Tennessee.—*State v. Leonard*, S. C. Tenn., 1888; 7 S. W. Rep. 453.

139. OFFICERS—Appointment — Revocation. —— The appointment of a county treasurer by the aid of the vote of a county commissioner whose term has expired, but whose successor has not qualified, is valid, under constitution of Colorado. When such appointee has qualified and assumed the duties of the office, his office cannot be vacated by a resolution of the commissioners attempting to rescind their action.—*People v. Reid*, S. C. Colo., March 9, 1888; 17 Pac. Rep. 302.

140. OFFICERS—Taxes—Funds.——When a collector is robbed, and subsequently pays a poll tax out of other moneys collected by him as taxes, he incurs no liability for so appropriating the funds in his hands, since all the money belongs to the State, and he is not required to keep such accounts separate.—*State v. Houston*, S. C. Ala., March 1, 1888; 3 South. Rep. 859.

141. PARENT AND CHILD — Damages. —— A parent suing for damages for injuries to his child cannot recover for probable prospective expenses for future medical services for the child.—*Cunningham v. Brooklyn, etc. Co.*, N. Y. Ct. App., April 10, 1888; 16 N. E. Rep. 65.

142. PARTITION—Sale.——Real estate which cannot be conveniently divided must be sold to effect partition thereof.—*Cazes v. Succession of Gassie*, S. C. La., March 3 1888; 3 South. Rep. 840.

143. PARTITION—Wills—Estoppel. ——A partition by the consent and with the co-operation of one of two devisees, made in pursuance of a provision in the will, does not estop him from taking the benefit of any limitation of the share of the other over to him against the purchaser of such share.—*Williams v. Lewis*, S. C. N. Car., March 12, 1888; 5 S. E. Rep. 435.

144. PARTNERSHIP—Good-will—Injunction.——When, upon dissolution of a partnership between A and B, it is agreed that A shall have the good-will and that B shall not engage in the same business in that place, A must show a substantial compliance with his agreement before he can enjoin B from carrying on such business in that place.—*Hollis v. Shafer*, S. C. Kan., Feb. 11, 1888; 17 Pac. Rep. 86.

145. PARTNERSHIP—Special Partner—Creditor's Bill.—Where a creditor, having obtained a judgment against a partnership, and his execution has been returned unsatisfied, and he files the complaint against special partners, charging that they had fraudulently withdrawn their assets from the firm, such statement sets out an equitable cause of action, and the parties are not entitled to a jury trial.—*Bell v. Merrifield*, N. Y. Ct. App., April 10, 1888; 16 N. E. Rep. 55.

146. PATENTS — Reissues — Hydraulic Mining. —— Whether the delay in applying for the reissue of a patent has been unreasonable is a question for the court. Reissued letters patent 8,876, to F. H. Fisher, for improvement in hydraulic mining apparatus on patent 110,222 contains new matter, and the delay in the application not being explained, is invalid.—*Hoskin v. Fisher*, U. S. S. C., March 19, 1888; 8 S. C. Rep. Rep. 834.

147. PLEADING — Bailment — Demand. —— Where A and B sue C for money sent by A to pay a claim of D against them, and they are sued by D for non-payment, and C testified that he paid the money to D, and refused to pay it, no demand is necessary to be alleged in the bill of particulars of the first suit.—*Woods v. Hamilton*, S. C. Kan., March 10, 1888; 17 Pac. Rep. 335.

148. PLEADING—Equity—Mistake.——When a plaintiff expressly disclaims title to a lot in his bill, but afterwards finds he was mistaken, the court will not award possession of it to him on his general prayer for relief, there having been ample time to amend.—*Hickson v. Bryan*, S. C. Ga., Feb. 15, 1889; 5 S. E. Rep. 495.

149. PLEADING—Fraudulent Conveyances—Nulla Bona. ——An action to set aside a conveyance for fraud, when there is no allegation nor proof of a return of *nulla bona* by the sheriff on plaintiff's judgment, will not lie.—*Complon v. Patterson*, S. C. S. Car., March 11, 1888; 5 S. E. Rep. 470.

150. PLEADING—Statute of Limitations.——The statute of limitations, to be of any avail to a defendant in a suit, must be pleaded or otherwise relied on.—*Seborn v. Beckwith*, S. C. App. W. Va., Feb. 11, 1888; 5 S. E. Rep. 450.

151. PLEADING—Verification—Attorney.——When, under South Carolina law, the attorney may verify a pleading, the non-residence of the parties does not change the rule.—*Hecht v. Freisleben*, S. C. S. Car., March 5, 1888; 5 S. E. Rep. 475.

152. POST-OFFICE—Robbing Mails—Stage Driver.—— A stage driver employed by a stage company which carries the mails, who was sworn as a mail carrier, is liable, under Rev. Stat. U. S., § 5467, though he is paid by the stage company.—*U. S. v. Hanna*, S. C. N. Mex., January Term, 1888; 17 Pac. Rep. 79.

153. PRACTICE—Damages—Nonsuit. ——In an action for injury to crops, when plaintiff proves his allegations but no definite amount of pecuniary loss, a nonsuit is properly granted.—*Waldrop v. Greenville, etc. R. Co.*, S. C. S. Car., March 1, 1888; 5 S. E. Rep. 471.

154. PRACTICE—Affidavit of Defense—Statute.——Construction of Maryland statutes relative to affidavits of defense. Such an affidavit must state such portions of the plaintiff's allegations as are admitted, and if merely general will be insufficient.—*Adler v. Crook*, Md. Ct. App., March 15, 1888; 13 Atl. Rep. 153.

155. PRACTICE—Appeal.——Judgment on a point reserved cannot be reviewed upon appeal, unless it has been excepted to.—*Lower, etc. Co. v. Weikel*, S. C. Penn., March 19, 1888; 13 Atl. Rep. 82.

156. PRACTICE—Continuance—Witness—Counsel. —— Circumstances stated under which an application for a continuance on the ground of the absence of counsel and of the absence of witnesses was properly denied.—*Northwestern, etc. Co. v. Primm*, S. C. Ill., March 28, 1888; 16 N. E. Rep. 98.

157. PRACTICE—Exception.——No exception lies to the finding of fact by the court.—*Stiles v. Sherman*, S. J. C. Mass., March 19, 1888; 16 N. E. Rep. 20; 5 N. Eng. Rep. 846.

158. PRACTICE—Improper Evidence—Harmless Error. ——When a court permits incompetent evidence to go to a jury, but afterwards instructs them to disregard it, and the jury returns a verdict in accordance with the instructions, the error is generally cured thereby.—*Woods v. Hamilton*, S. C. Kan., March 10, 1888; 17 Pac. Rep. 335.

159. PRINCIPAL AND AGENT—Authority—Notice.—— One who contracts for the purchase of land with a special agent of the owner, cannot bind the owner beyond the agent's authority, which he should ascertain.—*Yates v. Yates*, S. C. Fla., March 7, 1888; 3 South. Rep. 821.

160. PUBLIC LANDS — Patents — Cancelation.—— The United States may sue in any competent court to cancel a patent issued in its name for fraud, when the government is interested in the land, a fraud has been practiced on it and operates to its prejudice, or is under obligation to some one to make good his title by setting aside such patent, or its duty to the public requires it to so act. When the only object of the suit is to benefit one of two claimants, the suit must fail. The initiation and control of the suit lies with the attorney-general.—*U. S. v. San Jacinto T. Co.*, U. S. C. C., March 19, 1888; 8 S. C. Rep. 850.

161. QUIETING TITLE—Disclaimer—Writ of Possession. ——In an action to quiet title, after a disclaimer by defendants, one of whom is in possession, plaintiff may file an amended petition asking a writ of possession.—*Wyland v. Mendel*, S. C. Iowa, March 12, 1888; 37 N. W. Rep. 160.

162. QUIETING TITLE — Homestead—Bankrupt.——A deed by an assignee in bankruptcy, made subject to the bankrupt's homestead, does not cast a cloud on his title, and does not furnish ground for an action to set it aside.—*Murray v. Hazell*, S. C. N. Car., March 12, 1888; 5 S. E. Rep. 428.

163. RAILROAD—Bonds—Negotiable Paper.——Railroad bonds for the payment of money are not negotiable paper, within the meaning of the statute of Massachusetts, and are not entitled to grace.—*Chaffee v. Middlesex, etc. Co.*, S. J. C. Mass., March 2, 1888; 16 N. E. Rep. 34; 6 N. Eng. Rep. 59.

164. RAILROAD—Negligence.——Circumstances stated under which a railroad company was held responsible for negligence, in injuring the arm of a passenger who had rested it on the sill of an open window.—*Breen v. New York, etc. Co.*, N. Y. Ct. App., April 10, 1888; 16 N. E. Rep. 60.

165. REPLEVIN—Attachment — Proof.—— A judgment in replevin in favor of an officer seizing goods under an attachment, must be sustained by proof of his official character and of the proceedings and process under which he acted.—*Graham v. Shaw*, S. C. Kan., March 10, 1888; 17 Pac. Rep. 332.

166. REPLEVIN—Bond—Judgment—Review.——When a judgment in replevin adjudges the return of the property or its assessed money value, such value cannot be reviewed in an action on the replevin bond.—*Cantril v. Babcock*, S. C. Colo., March 9, 1888; 17 Pac. Rep. 296.

167. RAILROAD COMPANIES—Consolidation—Bonds.—— Construction of the statutes of Illinois relative to the consolidation of the Toledo and Wabash Railway Companies, and rulings on various points connected with

and growing out of such consolidation, and the proceedings of the parties interested therein.—*Compton v. Wabash, etc. Co.*, S. C. Ohio, March 13, 1888; 16 N. E. Rep. 110.

168. RAILROAD COMPANY—Evidence.——Circumstances stated under which it was held to be error not to allow the engineer of a train, the sparks from which it was alleged had set fire to property, to testify, there being a question as to the responsibility of another train on another road, and of the merits of the spark arresters used on each road.—*Collins v. New York, etc. Co.*, N. Y. Ct. App., April 10, 1888; 16 N. E. Rep. 50.

169. RAILROAD COMPANY — Negligence. ——Circumstances stated under which an engineer in charge of a locomotive being injured by the negligence of two railroad companies, for one of which he was running the engine and crossing the track of the other, both of which ought to have provided for his safety, is entitled to recover damages from either or both.—*Indiana, etc. Co. v. Barnhart*, S. C. Ind., March 20, 1888; 16 N. E. Rep. 121.

170. SALE — Execution — Possession.——Where one buys iron from another and allows it to remain in the possession of the vendor for 13 months, it is liable to seizure under execution against the vendor, although the execution creditor had notice of the sale.—*Warwick, etc. Co. v. First, etc. Co.*, S. C. Penn., March 19, 1888; 13 Atl. Rep. 79.

171. SALE—Misrepresentation—Value.—— A sale of an article of general commerce cannot be rescinded, because the purchaser, to induce a more advantageous bargain for himself, misrepresented the market value thereof, when there were no special circumstances making it his duty to impart his knowledge to the seller. —*Barns v. Mahannah*, S. C. Kan., March 10, 1888; 17 Pac. Rep. 319.

172. SALE — Notes — Title.——A written agreement specifying an absolute sale of notes, and providing for ascertaining and paying the price therefor, must be held on its face to have transferred the title thereto.—*Roundy v. Kent*, S. C. Iowa, March 10, 1888; 37 N. W. Rep. 146.

173. SLANDER — Pleading. ——Circumstances stated under which a charge of slander was held to have been sufficiently made, although not with technical accuracy. —*Binford v. Young*, S. C. Ind., March 22, 1888; 16 N. E. Rep. 142.

174. STATE—Claim Against State — Limitations—Statute.——Construction of New York statute relative to claim against the State growing out of the canals, the board of canal appraisers and the board of claims. Operation of the statute of limitations on those claims. —*McDougall v. State*, N. Y. Ct. App., April 10, 1888; 16 N. E. Rep. 78.

175. SUBROGATION — Vendor's Lien—Purchaser.——A purchaser at the foreclosure of a vendor's lien, which sale is declared void, cannot be subrogated to such lien, unless he can prove that it exists unsatisfied.—*Mehr v. Cole*, S. C. Ark., March 31, 1888; 7 S. W. Rep. 451.

176. STOCK—Killing — Negligence — Railroads.——In an action against a railroad for killing stock, it appeared probable that the stock got on the track through a gate in the railroad fence, which had been open for 36 hours, and was not known to have been closed for several days, and also that defendant inspected that place but once a week: *Held*, that the case should go to the jury as to the defendant's liability.—*Wait v. Burlington, etc. R. Co.*, S. C. Iowa, March 12, 1888; 37 N. W. Rep. 159.

177. TAXATION—Insurance — Reinsurance Fund.—— The fund reserved by a life insurance company to reinsure its policy holders, is not liable to taxation, under Iowa law.—*Equitable L. I. Co. v. Bd. of Equalization*, S. C. Iowa, March 10, 1888; 37 N. W. Rep. 141.

178. TAXATION—Purchase by Mortgagee.——When a mortgagee is not in possession of the land, and is not bound by covenant agreement or promise to pay the taxes, he may acquire title by buying the land at a tax-sale.—*Beckcith v. Seborn*, S. C. App. W. Va., Feb. 18, 1888; 5 S. E. Rep. 453.

179. TAXATION—Sale — Notice for Redemption.——A purchaser of land at a tax sale is not bound, under Iowa law, to give the owner notice of the expiration of the time for redemption, if on the assessment book at the time to give such notice, the land is taxed as belonging to an unknown owner.—*Griffin v. Tuttle*, S. C. Iowa, March 12, 1888; 37 N. W. Rep. 167.

180. TAX-TITLE—Redemption—Notice—Jury.——Where defendants denied that plaintiff's title to land was valid, because he, holding a tax-title, did not give the statutory notice for redemption to the person in possession, it is a question for the jury, whether, at that time, that person was in possession or an occupant at all.—*Jones v. Chamberlain*, N. Y. Ct. App., April 10, 1888; 16 N. E. Rep. 72.

181. TELEGRAPH COMPANIES — Liability — Negligence. ——A telegraph company cannot contract against liability for errors in transmitting messages, which result from its own gross negligence.—*Western U. T. Co. v. Crall*, S. C. Kan., March 10, 1888; 17 Pac. Rep. 309.

182. TELEGRAPH COMPANIES—Negligence.—— Where a party has full notice of the rule of a telegraph company that it will not be responsible for the non-delivery of unrepeated messages, he cannot recover damages for the non-delivery of such a message.—*Kiley v. Western, etc. Co.*, N. Y. Ct. App., April 10, 1888; 16 N. E. Rep. 75.

183. TELEGRAPH COMPANIES—Negligence — Evidence. ——When a telegraph message is very plainly written, and the receiver inquires from two way stations as to its correctness, of which he is assured from both, a verdict that the company was guilty of gross negligence in sending the message wrongly is sustained by the evidence.—*Western U. Tel. Co. v. Howell*, S. C. Kan., March 10, 1888; 17 Pac. Rep. 313.

184. TRESPASS—Entry—Statute. —— One who enters upon premises under a claim of right is not guilty of a criminal trespass, made a misdemeanor by the statute of New York, Pen. Code N. Y. § 467.—*People v. Stevens*, N. Y. Ct. App., April 10, 1888; 16 N. E. Rep. 53.

185. TRUSTS—Former Trustee—Action Against.——In an action by a substituted trustee of an insolvent estate against the executor of a former trustee to recover the assets in his hands, it is not error to refuse to order all the creditors to be made parties.—*Warren v. Howard*, S. C. N. Car., March 12, 1888; 5 S. E. Rep. 425.

186. TRUST—Resulting Trust. —— Where a plaintiff agrees with a defendant to buy in certain property under his execution against her, and allow her a limited time to redeem, if she fails to do so within that time there is no resulting trust in her favor.—*Salsbury v. Black*, S. C. Penn., March 12, 1888; 13 Atl. Rep. 67.

187. TROVER—Judgment — Lien. —— Under Georgia law, a judgment for plaintiff in trover creates a lien on the property, and an execution thereunder creates a special lien on the property in question.—*Frick v. Davis*, S. C. Ga., March 21, 1888; 5 S. E. Rep. 498.

188. UNDUE INFLUENCE—Deed. —— When a son, in whom the father had great confidence, induced the latter, who was of weak mind, to convey his property to him from fear that a third party was about to sue him: *Held*, that the deed should be set aside.—*Norton v. Norton*, S. C. Iowa, March 10, 1888; 37 N. W. Rep. 129.

189. USURY—Agreement—Abandonment.——A subsequent written agreement to extend a note upon usurious interest upon part payment thereof at maturity, is abandoned by a suit on the note, and the taint of usury is expurgated.—*Allen v. Tumham*, S. C. Ala., Feb. 28, 1888; 3 South. Rep. 854.

190. USURY—Purchaser—Agreement to Recovery.—— A purchaser at sheriff's deed agreed to reconvey to the debtor on payment of what he had paid and an usurious interest. The land went in succession to several vendees, who made the same agreement with the debtor: *Held*, that the title of the last vendee was not affected by the usurious contract.—*Pope v. Hartwell*, S. C. Ga., March 3, 1888; 5 S. E. Rep. 487.

191. VENDOR AND VENDEE—Deficiency—Abatement in Price.——A court of equity will abate the purchase

money for deficiency in a sale of land when the vendor has misrepresented the quantity thereof in his contract or deed or orally to the injury of the vendee.—*Pritchard v. Evans*, S. C. App. W. Va., Feb. 25, 1888; 5 S. E. Rep. 461.

192. VENUE—Trespass.——A suit will not lie in one county for trespass committed on land situated in another.—*State v. Crevier*, S. C. N. J., Feb. 27, 1888; 13 Atl. Rep. 28.

193. WILL—Construction—Legatee.——Where a testator by will gave his widow his land for life and all the personal property that might be thereon at the time of his death, it does not appear from the will that all his personal property was disposed of, and a legatee who seeks to subject the land to the payment of his legacy must show that there was no personal property out of which it could be paid.—*Duncan v. Wallace*, S. C. Ind., March 20, 1888; 16 N. E. Rep. 137.

194. WILL—Construction—Life Estate.——By will, A devised all his property to his wife, requesting that the real estate be properly attended to, and upon her death requested that such of said property as should then be in her possession should be given to their adopted daughter: *Held*, that all of said property, except what had perished in the using, upon the wife's death vested in the daughter, and the wife could not devise it.—*Munro v. Collins*, S. C. Mo., March 19, 1888; 7 S. W. Rep. 461.

195. WILL—Contingent Estate—Vesting. —— When a will provides that upon the death of R without a bodily heir, A shall take the estate, under North Carolina law, upon the death of R without such heir, after the death of the testator, A takes the estate.—*Buchanan v. Buchanan*, S. C. N. Car., March 19, 1888; 5 S. E. Rep. 430.

196. WILL—Estate—Remainder. —— The words in a will "I give and devise to my son M, his heirs and assigns by his present wife, S, forever, the farm," vests a life estate in the son, with remainder in fee in his children.—*Weart v. Cruser*, N. J. Ct. Err. & App., March Term, 1887; 13 Atl. Rep. 36.

197. WITNESS — Competency — Accused. —— Under Tennessee laws, the accused may always testify in his own behalf, though he may have been adjudged infamous.—*Rayland v. State*, S. C. Tenn., 1888; 7 S. W. Rep. 456.

198. WITNESS—Opinion—Eminent Domain.——A question in a case of eminent domain, asking the witness' opinion as to the deterioration of property from the taking of a part of it for a railroad, considering the various elements of damage, is improper, since it is asking the witness to advise the jury as to their verdict.—*Wichita, etc. R. Co. v. Kuhn*, S. C. Kan., March 10, 1888; 17 Pac. Rep. 322.

199. WITNESS—Subpœna—Service.——A subpœna on a wife may be served on her husband, a codefendant, in the manner provided by delivery to a member of the family.—*McLane v. Piaggio*, S. C. Fla., March 7, 1888; 3 South. Rep. 823.

200. WITNESS — Transactions with Deceased.——A stockholder of a corporation can, under Tennessee laws, testify as to his conversations with A relative to a contract under which the corporation is suing A's administrator.—*Grange W. Assn. v. Owen*, S. C. Tenn., 1888; 7 S. W. Rep. 457.

QUERIES AND ANSWERS.*

QUERY NO. 31.

Trial of a real estate foreclosure suit in Iowa. The petition contains the ordinary allegations of priority of plaintiff's lien. One of defendant's answers denying generally allegations of petition, and pleading a prior incumbrance. Does plaintiff make out a *prima facie* case by introducing in evidence his note and mortgage and the recording certificate, and does the burden then rest upon the defendant to establish the priority of his lien? Cite authorities. M. & S.

QUERIES ANSWERED.

QUERY NO. 30 [*26 Cent. L. J. 487.*]

In a prosecution for forgery, can the State make out a case without introducing the alleged forged instrument if within its reach? And is a failure to introduce the instrument, such as want of support of evidence as would be ground for setting aside a verdict of guilty? Cite authorities. W. C.

Answer.—The State must introduce the alleged forged instrument, if it is in existence and accessible. 3 Greenl. Ev. § 107, and cases cited. For a failure to introduce it, the verdict should be set aside. A. L.

RECENT PUBLICATIONS.

THE AMERICAN DECISIONS, Containing the Cases of General Value and Authority Decided in the Courts of the Several States from the Earliest Issue of the States Reports to the Year 1869. Compiled and Annotated by A. C. Freeman, Counselor at Law, and Author of Treatises on the "Law of Judgments," "Co-tenancy and Partition," "Executions in Civil Cases," etc. Vol. XCVIII. San Francisco: Bancroft-Whitney Company, Law Publishers and Law Booksellers. 1888.

In our last number of the JOURNAL we notice the receipt of volume 97, of the American Decisions. We have now before us volume 98 of that excellent collection, and take pleasure in saying that it is in all respects fully equal to its predecessors. The cases reported in this volume, like all the others, are enriched by appropriate notes, which, of themselves, are really worth to the practitioner the full cost of the volume.

The cases reported were all decided in 1868, and we may fairly presume, although it does not appear to be so announced in the volume itself, that as the series closes in 1869, this is probably the last volume. We learn, however, that the Bancroft-Whitney Company have become the proprietors of the collection of selected cases heretofore issued by John D. Parsons, Jr., of Albany, New York, known to the profession as the "American Reports." This collection includes all cases of interest and importance decided in the State courts between the years 1869 and 1888, and it is the design of its new proprietors to continue the series under the name of the American State Reports, the first volume appearing in August, 1888, so as to include important cases decided in the State courts from and after the period at which the American Reports close.

Thus, in the combined series of American Decisions, American Reports and American State Reports (over one hundred and sixty volumes already issued), will be found all cases worthy of preservation, decided by State courts since the organization down to the present day, the selection being made by gentlemen, Messrs. A. C. Freeman for the American Decisions, and Irving Browne for the American Reports, whose very names are a sufficient guaranty to every lawyer of their learning, ability and acumen. These volumes are indeed a century of law, and invaluable to the profession.

We learn that Mr. A. C. Freeman will be the editor-in-chief of the continuation of American Decisions, and will be supported by efficient and learned assistants; the plan of the work will be similar to that upon which the American Decisions have been conducted, with such improvements as have been found by experience to be desirable.